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A study of the teachers' tenure laws in Massachusetts.

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A STUDY OF THE TEACHERS' TENURE LAWS
IN MASSACHUSETTS

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A STUDY OF THE TEACHERS' TENURE LAWS
IN MASSACHUSETTS

by
ALLAN JOHN O'BRIEN

A Problem in Partial Fulfillment of the Requirements
for the Master of Science Degree

MASSACHUSETTS STATE COLLEGE

Amherst, Massachusetts

June, 1946

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CHAPTER I

THE INTRODUCTION

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THE INTRODUCTION

The tenure laws have played an important role in the employment of teachers in the public schools of the Commonwealth of Massachusetts from the time of the enactment of the first tenure law in 1886 up to the present day. The history of those sections of the General Laws of Massachusetts which comprise the laws regarding tenure indicate clearly the growing importance of these laws throughout the decades. There is no question concerning the fact that present day teachers are more secure in their positions than were the teachers of the past. The trend of society in recent years has been to protect the positions of its civil servants and the teachers who belong to this group have fared better than some groups and not as well as some others.

This problem is devoted to an attempt to determine to as thorough a degree as is possible the amount of protection which the laws pertaining to tenure offer to one employed as a teacher, supervisor, principal, and superintendent in the public schools of Massachusetts.

One may well ask: "What protection do the laws of Massachusetts give to me as a teacher in the public schools of the state in regard to the permanency of my position?" A question so general in nature may be answered most adequately

by breaking it down into a series of more specific questions and attempting to answer them in the light of legislative enactments, legal opinions, and court decisions involving cases which have arisen concerning the laws applying to tenure. Such a procedure is followed here.

The chapters which make up this study have been written to answer the following questions:

1. What does the word "tenure" mean?
2. What is the purpose of the tenure laws?
3. What laws deal with tenure?
4. Who are protected by the tenure laws?
5. Under what conditions may a teacher serving on tenure be dismissed?
6. Are such conditions always essential to the dismissal of a teacher?
7. What degree of power is invested in the school committee regarding tenure and dismissal of teachers?
8. Is it possible for a teacher who has been dismissed by a school committee to be reinstated?
9. Is it possible for the laws relating to tenure of teachers to be rendered ineffective?
10. What procedure should a teacher follow who is about to be dismissed?
11. To whom should a teacher present his grievance if he has been dismissed?

12. Is it possible for a school committee to reduce a teacher's salary in an attempt to force his resignation?

It is hoped that the answers to these questions will indicate the degree of protection which the laws applying to tenure offer to a teacher, supervisor, principal, and superintendent serving in the employ of the public schools of the Commonwealth of Massachusetts, and thus provide an answer to the problem.

CHAPTER II

HISTORY OF THE TENURE LAWS

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HISTORY OF THE TENURE LAWS

An examination of the General Laws of the Commonwealth of Massachusetts indicates that four sections of chapter 71, namely sections 41, 42, 43, and 63, apply to the tenure of teachers, supervisors, principals and superintendents in the employ of the public schools of Massachusetts.

In carrying out the purpose of this study to determine the degree of protection which these laws offer the above-mentioned group it will be necessary to examine these laws as they originally existed along with the changes which have brought them to their present form. This chapter is devoted to the history of these laws.

Before going back into this legislative history, it will be beneficial to possess a clear meaning of the word "tenure" and of its purpose.

Meaning of the Word "Tenure" -- "Tenure" is defined as "the¹ term of holding office." It is a status to which teachers, supervisors, principals and superintendents attain upon fulfilling the conditions of the tenure statute.

Purpose of Tenure -- The purpose of a tenure statute has been declared to be the promotion of "good order and the welfare of the state and of the school system by preventing the re-

¹ Devlin, Joseph, Webster's New Standard Dictionary, The World Syndicate Publishing Company, p. 936.

moval of capable and experienced teachers at the political or personal whim of changing office holders."²

Original Tenure Law -- The first legislative enactment by the General Court of Massachusetts which applied to the tenure of teachers was Statute 1886, chapter 313 entitled "An Act Relating to the Tenure of Office of Teachers" and is stated as follows: "The school committee of any city or town may elect any duly qualified person to serve as a teacher in the public schools of such city or town during the pleasure of such committee provided, such person has served as a teacher in the public schools of such city or town for a period of not less than one year."

Previous to the above enactment, an act was passed by the Massachusetts General Court in 1844 entitled "An Act Concerning the Powers of School Committee." This act did not specify the word "tenure" in its phraseology but did affect the employment of teachers because of the powers of dismissal of teachers which it gave the school committee. This statute said: "The school committee of any town is hereby authorized to dismiss from employment any teacher in such town, whenever the said committee may think proper, and from the time of such dismissal such teacher shall receive no further compensation rendered in that capacity."

² O'Keefe, William J., "Teachers and Their Legal Rights", Educational Law Series Number 1, p. 45.

Act of 1914 -- Statute 1895, mentioned above, remained unchanged until passage of Statute 1914, chapter 714, referred to as "An Act Relative to the Tenure of Offices of Teachers and Superintendents of Public Schools" which embraces the acts of 1844 and 1866 and is stated here:

Section 1. The school committee of a city or town, in electing a teacher or superintendent who has served in the public schools of its city or town for the three previous consecutive years, shall employ such teacher or superintendent to serve at the discretion of the school committee subject to the provisions of section two of this act.

Section 2. The school committee of a city or town, may dismiss any teacher or superintendent from employment by a two-thirds vote of the whole committee, and such teacher or superintendent shall not receive any compensation for service rendered after dismissal; provided that a teacher or superintendent employed to serve at the discretion of the school committee, as provided in section one of this act, shall not be dismissed unless at least thirty days prior to the meeting, exclusive of customary vacation periods, at which the committee votes upon the question of dismissal, nor unless he shall have been given notice of the intention of the school committee to vote upon the question of dismissal, nor unless he shall have been given on his own request, a statement by the school committee of the reasons for which his dismissal is proposed; nor unless, also, in the case of a teacher, the superintendent of schools shall have given to the school committee his recommendations as to the proposed dismissal.

Section 3. (1) No teacher employed to serve at the discretion of the school committee, as provided in section one of this act, shall suffer a decrease of salary without his consent, except by a general salary revision affecting equally all teachers of the same salary grade in the city or town.

(2) A superintendent employed to serve at the discretion of the school com-

mittee shall suffer no decrease in salary without his consent, until at least one year after the school committee has voted to reduce his salary.

Section 4. Nothing herein contained shall be construed as limiting the right of a school committee to suspend a teacher or superintendent for immoral conduct or other conduct unbecoming a teacher; and if the teacher or superintendent so suspended is subsequently dismissed because of such conduct, he shall not receive any salary for the period of his suspension.

Section 5. Nothing herein contained shall be construed as limiting the right of a school committee to dismiss a teacher when an actual decrease in the number of pupils in the schools of the city or town renders such action advisable.

Section 6. All acts and parts of acts inconsistent herewith are hereby repealed.

Section 7. This act shall not apply to superintendents of superintendency unions.

Section 8. This act shall not apply to the City of Boston.

Changes in Law through 1914 -- Important changes are noted in the 1914 act over those of 1844 and 1886. Primarily, Statute 1914 compelled school committees to employ teachers at discretion if these teachers were appointed again after having served for the three previous consecutive years in the same system. The 1914 act includes superintendents when mentioning rights of tenure, whereas no mention was made of this group in the act of 1886. The latest act altered the conditions for dismissal of teachers and superintendents as laid down in the act of 1844 by requiring a two-thirds vote of the whole committee; a thirty days notice of intention of the

committee to vote on dismissal; a statement of reasons for proposed dismissal if the teacher or superintendent so requests; a recommendation, in the case of a teacher, from the superintendent to the committee as to the proposed dismissal.

It may also be noted here that section 3 of Statute 1914 offered certain protection for teachers and superintendents from decreases in salary. Nothing of this nature can be found in any previous laws. Furthermore, superintendents of superintendency unions were specifically excluded from the provisions of Statute 1914. Finally, the latter act excluded the City of Boston from its embrace. Statute 1918 -- An act of 1918, chapter 257, section 182, amended section 7 of chapter 714 of the acts of 1914 by adding at the end thereof the words "or districts."

Section Forty-one -- In 1920 the above mentioned acts were combined into sections 41, 42, and 43 of chapter 71 through a consolidation and arrangement of the General Laws of Massachusetts. Section 41 remained unchanged from 1920 through the Tercentenary Edition of the General Laws in 1932 to the present time and is quoted here: "Every school committee, except in Boston, in electing a teacher or superintendent, who has served in its public schools for the three previous consecutive school years, other than a union or district superintendent, shall employ him to serve at its discretion; but any school committee may elect a teacher who

has served in its schools for not less than one school year to serve at such discretion."

Section Forty-two -- Section 42 was altered by Statute 1921, chapter 293 entitled "An Act Relative to the Dismissal of Public School Teachers and Superintendents." It said:

"Section 42 of chapter 71 of the General Laws is hereby amended by inserting after the word 'proposed' in the tenth line the following: '. . . nor unless, if he so requests, he has been given a hearing before the school committee, at which he may be accompanied by a witness.'" This alteration is self-explanatory.

With the above change, section 42 remained intact from 1921 through the Tercentenary Edition of the General Laws (1932) and is here quoted:

The school committee may dismiss any teacher, but in every town except Boston no teacher or superintendent, other than a union or district superintendent, shall be dismissed unless by a two-thirds vote of the whole committee. In every such town a teacher or superintendent employed at discretion under the preceding section shall not be dismissed unless at least thirty days prior to the meeting, exclusive of customary vacation periods, at which the vote is to be taken, he shall have been notified of such intended vote, nor unless, if he so requests, he shall have been given a statement by the committee of the reasons for which his dismissal is proposed; nor unless, if he so requests, he has been given a hearing before the school committee, at which he may be accompanied by a witness; nor unless, in the case of a teacher, the superintendent shall have given the committee his recommendations thereon. Neither this nor the preceding section shall affect the right of the committee to suspend a teacher or superintendent for unbecoming conduct, or to

dismiss a teacher whenever an actual decrease in the number of pupils in the schools of the town renders such action advisable. No teacher or superintendent who has been lawfully dismissed shall receive compensation for services rendered thereafter, or for any period of the lawful suspension followed by dismissal.

An Act of 1934 -- An act of 1934, chapter 123, entitled "An Act Relative to the Dismissal of Public School Teachers and Superintendents" is worded as follows:

Chapter 71 of the General Laws is hereby amended by striking out section 42 as appearing in the Tercentenary Edition thereof and inserting in place thereof the following:

'The school committee may dismiss any teacher, but in every town except Boston no teacher or superintendent, other than a union or district superintendent, shall be dismissed unless by a two-thirds vote of the whole committee. In every such town a teacher or superintendent employed at discretion under the preceding section shall not be dismissed, except for inefficiency, incapacity, conduct unbecoming a teacher or superintendent, insubordination or other good cause, nor unless at least thirty days, exclusive of customary vacation periods, prior to the meeting at which the vote is to be taken, he shall have been notified of such intended vote; nor unless, if he so requests, he shall have been furnished by the committee with a written charge or charges of the cause or causes for which his dismissal is proposed; nor unless, if he so requests, he has been given a hearing before the school committee which may be either public or private at the discretion of the school committee and at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless the charge or charges shall have been substantiated; nor unless, in the case of a teacher, the superintendent shall have given the committee his recommendations thereon. Neither this nor the preceding section shall affect the right of a committee to suspend a teacher or superintendent for unbecoming conduct, or to dismiss a teacher whenever an actual decrease in the number of

pupils in the schools of the town renders such action advisable. No teacher who has been lawfully dismissed shall receive compensation for services rendered thereafter, or for any period of lawful suspension followed by dismissal.

Effect of 1934 Revision of Section Forty-two -- The revision of section 42 by the act of 1934 inserted into the law the exception as to dismissal for inefficiency, incapacity, conduct unbecoming a teacher, or other good cause. It also added the provision applying upon substantiation of the charges, and changed to a certain extent the procedure relating to the hearing.

Formerly there was no requirement that the charges against a teacher be "substantiated" in a proceeding before the school committee in the nature of a judicial investigation. Prior to 1934 no judicial investigation was required as a prerequisite to removal. The committee in good faith could, by the requisite majority, dismiss a superintendent or teacher without legal cause.³

Section Forty-two A -- Section 42 was broadened again by an act of 1945, chapter 330, entitled "An Act Giving Certain Rights to School Principals and Supervisors in Cases of Demotion." It reads:

Chapter seventy-one of the General Laws is hereby amended by inserting after section forty-two, as amended, the following section: '. . .

³ See *Graves vs. School Committee of Wellesley*, 299 Mass. 80.

Section 42A. No principal or supervisor who has served in that position for over three years shall, without his consent, be demoted for inefficiency, incapacity, unbecoming conduct, insubordination or other good cause; nor unless, at least thirty days, exclusive of customary vacation periods, prior to the meeting at which the vote is to be taken, he shall have been notified of such intended vote; nor unless, if he so requests, he shall have been furnished by the committee with a written charge or charges of the cause or causes for which his demotion is proposed; nor unless, if he so requests, he has been given a hearing before the school committee, which may be either public or private at the discretion of the school committee, and at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless the superintendent shall have given the committee his recommendations thereon.'

In short, section 42A gives the same degree of protection from demotion to principals and supervisors as section 42 gives to teachers and superintendents from dismissal.

House Bill 365 -- At the present time there is a bill awaiting hearing before the Massachusetts General Court which, if passed, will further amend section 42. It is the 1946 House Bill number 365, entitled "An Act to Give Preference to Teachers Serving on Tenure When It Is Necessary to Reduce the Number of Teachers in a School Department because of a Decrease in the Number of Pupils." It reads:

Section forty-two of chapter seventy-one of the General Laws (Tercentenary Edition), as most recently amended by chapter one hundred and twenty-three of the acts of nineteen hundred and thirty-four, is hereby further amended by adding the following sentence at the end thereof; '. . . In case a decrease in the number of pupils in the schools of a town

renders advisable the dismissal of one or more of the teachers, a teacher who is serving at the discretion of a school committee under the terms of section forty-one of this chapter shall not be dismissed if there is a teacher not serving at discretion whose position the teacher serving at discretion is qualified to fill.'

Section Forty-three -- The rearrangement of the General Laws of Massachusetts in 1920 made section 3 of chapter 714 of the Acts of 1914 into section 43 of chapter 71. This section remained unchanged through the Tercentenary Edition of the General Laws (1932) to the present. Section 43 is quoted here:

The salary of no teacher employed in any town except Boston to serve at discretion shall be reduced without his consent except by a general salary revision affecting equally all teachers of the same salary grade in the town. The salary of no superintendent so employed shall be reduced without his consent until at least one year after the committee has so voted.

Origin of Section Sixty-three -- The history of the present section 63 must be treated separately from the sections whose history has been discussed above because its origin differs from that of the other laws with which we are concerned.

The first mention in statutes concerning the employment of a union superintendent may be found in Statute 1870, chapter 183, sections 1 and 2, entitled "An Act Authorizing Towns to Unite in the Election of Superintendents."

Section 1. Any two or more towns may, by a vote of each, form a district for the purpose of employing a superintendent of public schools therein, who shall perform in each

town the duties prescribed by law.

Section 2. Such superintendent shall be annually appointed by a joint committee composed of the chairman, the secretary of the school committees of each town in said district, who shall determine the relative amount of service to be performed by him in each town, fix his salary, and apportion the amount thereof to be paid by the several towns and certify the same to the treasurer of each town. Said joint committee shall, for the purposes named in this section, be held to be the agents of each town composing the district aforesaid.

The above sections were incorporated in the Public Statutes of the Commonwealth of Massachusetts in 1882 as sections 43, 44, and 45 of chapter 44.

Statutes of 1888, 1893, and 1898 dealt with school unions but did not change the method of election nor the term of office of a union superintendent, said term being for one year.

The Revised Laws of January, 1902, incorporated the law concerning the employment of a superintendent of a school union in sections 42 and 44 of chapter 42. Section 42 said:

Such superintendent shall be annually appointed by a joint committee composed of the chairman and secretary of the school committee of each of the towns in said district, who shall determine the relative amount of service to be performed by him in each town, fix his salary, apportion the amount thereof to be paid by the several towns and certify the same to each town treasurer.

Section 44 said:

The school committee of such towns shall

be a joint committee, which for the purpose of such union, shall be the agents of each town therein. The joint committee shall annually, in April, meet at a day and place agreed upon by the chairmen of the committees of the several towns comprising the union, and shall organize by the choice of a chairman and a secretary. They shall choose, by ballot, a superintendent of schools, determine the relative amount of service to be performed by him in each town, fix his salary, apportion the amount thereof to be paid by the several towns and certify it to the town treasurer.

Statute of 1911 -- The term of office of a superintendent remained one year until the passage of Statute 1911, chapter 384, entitled "An Act Relative to the Tenure of Office for Superintendents of School Unions." This act amended section 44 of chapter 42 of the Revised Laws by striking out from said section the words "choose by ballot" and by adding at the end of the section the words:

Such superintendent of schools shall be employed for a term of three years, and his salary shall not be reduced during such term. Failure of a superintendent during his term of office to receive a certificate as provided by chapter two hundred and fifteen of the year nineteen hundred and four, upon the expiration of a prior certificate, shall thereby vacate his office. He may be removed from office by a two-thirds vote of the full membership of the joint committee, and with the consent of the board of education to such dismissal, whereupon his salary shall cease.

The above amendment fixed a union superintendent's term of office as three years, protected him from a reduction in salary, required his certification, and provided the machinery for his removal.

Section 43 was amended by Statute 1911, chapter 399.

This amendment dealt with the permanency of superintendency unions but did not change the conditions concerning the employment of superintendents.

Statute of 1912 -- Statute 1912, chapter 114, entitled "An Act to Secure Equality of Representation of Towns on the Joint Committee of a Superintendency Union" is stated in part here because of its importance in the organization of the group which employs a superintendent of a union and because it forms part of section 63 of chapter 71 of the General Laws (Tercentenary Edition):

Section forty-three of chapter forty-two of the Revised Laws, as amended by chapter three hundred and ninety-nine of the acts of the year nineteen hundred and eleven, is hereby further amended by striking out the word 'which' in the twelfth line, and inserting in place thereof the words: '. . . provided, that any school committee consisting of more than three members shall be represented on the joint committee by its chairman and two members, chosen by said committee . . .'

An Act of 1945 -- Parts of sections 42, 43, and 44 of the Revised Laws, as amended by the statutes of 1911 and 1912, were combined to form section 63 of chapter 71 by the arrangement and consolidation of the General Laws in 1920. Section 63 remained unchanged through the Tercentenary Edition of 1932 until amended by Statute 1945, chapter 223, sections 1 and 2, entitled "An Act Giving to Certain Superintendents of Schools in Superintendency Unions the Tenure Benefits Granted to Other School Superintendents."

Section 1. Section sixty-three of chapter seventy-one of the General Laws, as appearing in the Tercentenary Edition, is hereby amended by adding at the end the following paragraph:
 ' . . . A superintendent in a union who has served continuously in the same union for more than three years and who has been employed at least twice as superintendent in said union, each for a term of three years, shall not be removed except for inefficiency, incapacity, conduct unbecoming a superintendent, insubordination or other good cause, nor without full compliance with the provisions of section forty-two, relative to teachers and other superintendents, as to notice of intention to dismiss, specification of charges, hearing and substantiation of charges.'

Section 2. Notwithstanding the provisions of section one of this act, a superintendent of a superintendency union in office on its effective date shall not be entitled to the benefits thereof except after he has been re-employed in said office.

The above amendment places a union superintendent under the same rules for dismissal as any other superintendent and gives him the opportunity to serve at discretion after having been employed at least twice in a given union, each for a term of three years.

Section Sixty-three -- Section 63, as it now stands, is as follows:

Section 1. The school committees of such towns [towns comprising union districts] shall, for the purposes of the union, be a joint committee and shall be the agent of each participating town, provided that any school committee of more than three members shall be represented therein by its chairman and two of its members chosen by it. The joint committee shall annually, in April, meet at a day and place agreed upon by the chairmen of the constituent committees, and shall organize by choosing a chairman and a secretary. It shall employ for a three-year term, a superintendent

of schools, determine the relative amount of service to be rendered by him in each town, fix his salary, which shall not be reduced during his term, apportion the payment thereof in accordance with section sixty-five among the several towns and certify the respective shares to the several town treasurers. He may be removed, with the consent of the department, by a two-thirds vote of the full membership of the joint committee.

A superintendent in a union who has served continuously in the same union for more than three years and who has been employed at least twice as superintendent in said union, each for a term of three years, shall not be removed except for inefficiency, incapacity, conduct unbecoming a superintendent, insubordination or other good cause, nor without full compliance with the provisions of section forty-two, relative to teachers and other superintendents, as to notice of intention to dismiss, specification of charges, hearing and substantiation of charges.

Section 2. Notwithstanding the provisions of section one of this act, a superintendent of a superintendency union in office on its effective date shall not be entitled to the benefits thereof except after he has been re-employed in said office.

This chapter has treated the history of the laws applying to tenure from the first legislation concerning them up to the present date, including the proposed legislation which consists at present of 1946 House Bill 365. Such a history will be of value to the reader in connection with the following chapters.

CHAPTER III

SUPREME COURT DECISIONS AND OPINION OF
ATTORNEY GENERAL ON SECTION FORTY-ONE

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The Supreme Judicial Court of the Commonwealth of Massachusetts has handed down a considerable number of decisions on cases which have arisen from the three laws on tenure of teachers, namely sections 41, 42, and 43 of chapter 71 of the General Laws of Massachusetts, as well as several decisions on cases which have arisen from the law concerning the dismissal and tenure of superintendents of school unions which is section 63 of the same chapter. This phase of the study concerns itself with these decisions as an aid to the formation of a conclusion as to the extent to which the tenure laws offer protection to the public school teachers and superintendents in the Commonwealth of Massachusetts.

There are two opinions of attorney generals of the commonwealth which have been handed down on the tenure laws. These opinions, while not binding in a court of law, are of some value in indicating the reactions that these laws, or the cases concerning them, have on the legal minds who render decisions on our laws.

It seems only logical in presenting the Supreme Court decisions and the opinions of the attorney generals on cases arising from these laws to group them according to the law

which provoked them. Some of the decisions tie in with more than one of the laws. Where this situation occurs, the case is repeated in the presentation. It is with this thought of sequence in mind that the information which follows begins with the decisions arising from questions on section 41 of chapter 71 of the General Laws and is followed by the decisions on sections 42, 43, and 63 of the same chapter.

Section Forty-one -- It seems wise at this point to quote section 41 of chapter 71 of the General Laws. This law says:

Every school committee, except in Boston, in electing a teacher or superintendent, who has served in the public schools for the three previous consecutive school years, other than a union or district superintendent, shall employ him to serve at its discretion; but any school committee may elect a teacher who has served in its schools for not less than one school year to serve at such discretion.

This law, like all others, has been put to many tests during its lifetime. Naturally, situations arise which are not covered by the law. These situations result in the decisions of the courts which are presented below. A glance at the above law makes one conscious of some of the more obvious questions which have arisen in connection with it. Following is a list of questions provoked by this law:

1. What were the conditions of employment prior to the enactment of the law?
2. How inclusive is the power of the school committee under this law?

3. Does the law apply to teachers other than those on tenure?
4. Must tenure be granted to a teacher who is reappointed after three consecutive years of service?
5. What is the legal meaning of the word "discretion"?
6. Does the law apply to part-time teachers?

The answers to the above questions are presented below following the Supreme Court decisions on the cases that resulted from this law.

School Committee could Discharge a Teacher at any Time --

It was long the law that a school committee could discharge a teacher at any time. This was borne out in the decision in the case of Knowles vs. City of Boston.⁴ This case was an action of contract brought by Charlotte M. Knowles against the City of Boston in the Supreme Judicial Court, to recover salary as a teacher in a public school in Boston.

Miss Knowles was for several years an assistant teacher in Boston, having been appointed annually and serving in that capacity until she was notified by the school committee that the school where she taught had been voted to be abolished and that her services were no longer required. She was dismissed for no fault on her part.

As the plaintiff had been appointed for the school year and had worked under said appointment for a few weeks before

⁴ Knowles vs. City of Boston, 78 (12 Gray) Mass. 339.

being dismissed, she sued for salary for the first quarter of the school year. The defendants offered to be defaulted for a proportional part of the salary to the time of the plaintiff's dismissal, and the parties submitted the case to the decision of the Superior Court who gave judgment for the plaintiff for the sum offered. The plaintiff appealed and the judgment was upheld by the Supreme Court.

The Supreme Court stated that the facts in the case showed that the mode of selection of teachers by the city was to make choice of them annually, and that they usually continued in employment in pursuance of such election for the ensuing year. But such an employment, in the absence of express stipulation, must be deemed to have been entered into under the provisions of the statute, which gave the right to the school committee to terminate it at any time.

Power of the School Committee Conferred in most General Terms --

In the case of Pulvino vs. Yarmouth, the Supreme Court elaborated on the power of the school committee.

Joseph Pulvino was employed as Supervisor of Music in the superintendency union comprising the towns of Dennis, Yarmouth, and Brewster. He was under a single year's contract beginning in the month of September, 1931 but was dismissed in December of that year because the superintendent reported dissatisfaction with his work. The case went before the Superior Court in which a verdict was returned in favor of the defendants. The plaintiff excepted and the Supreme Court upheld the decision of the Superior Court.

In upholding the decision of the Superior Court the Supreme Court said:

It was suggested that the statute (Statute 1844, chapter 32) which states that the school committee of any town may dismiss from employment any teacher whenever they may think proper, did not intend to authorize the school committees to dismiss teachers unless some fault or neglect was committed by them in the performance of their duties. But this is altogether too narrow an interpretation of the above statute. The power of the school committee is conferred in the most general terms, and it is to be exercised whenever in the judgment of those to whom it is committed the public good for any cause requires it. Of this they are the exclusive judges.⁵

Present Law Applies only to Teachers who are on Tenure -- In the Pulvino case the court pointed out that the changes made by sections 41 and 42 in securing permanency of tenure and requiring certain procedure for a valid discharge relate only to teachers who are "on tenure", and do not apply to one employed for a single year.⁶

The Terms of Section Forty-one are Mandatory -- This fact was brought out in the case of Paquette vs. City of Fall River.⁷

Two teachers in the public schools of Fall River, Lillian J. Paquette and Alvin A. Gaffney brought separate actions against said city to recover a sum equivalent to the twenty percent reduction that was voted by the school committee for all teachers serving on tenure in Fall River.

⁵ Pulvino vs. Yarmouth, 286 Mass. 21.

⁶ Ibid.

⁷ Paquette vs. City of Fall River, 278 Mass. 172.

The cases went to the Superior Court where they were consolidated and a finding made for the defendant. The plaintiffs excepted and the case went to the Supreme Court which upheld the decision of the Superior Court and stated in part that "the school committee has no option to elect the teachers there described" (in section 41) except "to serve at its discretion." The meaning of this statutory language is that such discretion includes every essential element in the service thus established save as otherwise specified by statute. In this connection the discretion of the school committee denotes freedom to act according to honest judgment.

Implication of the Term "Discretion" -- In the Paquette vs. Fall River case mentioned above the Supreme Court stated:

The term 'discretion' implies the absence of a hard and fast rule. The establishment of a clearly defined rule of action would be the end of discretion, and yet discretion should not be a word for arbitrary will or inconsiderate action. Discretion means a decision of what is just and proper in the circumstances.⁸

The relation between teachers employed to serve at the school committee's discretion and the city constitute a continuous and indeterminate service subject to the statutory provisions and the exercise of discretion by the school committee within the prescribed limits. They do not establish employment from year to year.⁹

⁸ Paquette vs. Fall River, 278 Mass. 172.

⁹ Paquette vs. Fall River, 278 Mass. 172 citing Corrigan vs. Fall River, 250 Mass. 330, 339.

Three Year Period of this Statute cannot be Lengthened by School Board -- In a petition for a writ of mandamus, filed in the Supreme Judicial Court without a decision from the Superior Court, Marjorie J. Frye sought reinstatement to her position as a teacher in the public high school of Leicester.¹⁰

The issue depended on whether or not the petitioner had attained the status of tenure. The school committee claimed that because her last election took place on May 6, 1936, before the final expiration of her third consecutive school year, she had not served "for the three previous consecutive school years" as required by statute.

In ordering the petitioner reinstated to her position, the court held that the clear purpose of section 41 is to provide some degree of protection for the tenure of teachers who have served a probationary term of three consecutive school years and who are continued in employment thereafter, and that doubtless its phraseology was influenced by the practice of electing teachers during the period intervening between the end of one school year and the beginning of the next. It could not have been intended that a school board could in substance lengthen the three year period of the statute into a four year period by holding its election of teachers on the last day of a school year instead of the day

¹⁰ Frye vs. School Committee of Leicester, 300 Mass. 537.

following.

The Words "Has Served" and "Previous" do not Refer to the Precise Time of Holding the New Election -- In the case of Frye vs. School Committee of Leicester mentioned above, the court pointed out that the words "has served" and "previous" refer to the time of the beginning of service under that election, and the dominant words of the mandate, "shall employ . . . to serve at discretion." Therefore, a teacher must be deemed on tenure at discretion when he has actually served three consecutive school years, and has been elected for further service, even though the election takes place before the expiration of the last three consecutive school years.¹¹

"Part Time Teachers" are not under Separate Classification --

The Supreme Court further stated in the Frye case that section 41 recognizes no separate classification of "part time" teachers. The sole test mentioned is "service for three previous consecutive years."¹²

School Teachers who are not Employed at Discretion Serve only upon a Yearly Basis -- In an action of contract involving forty-one employees of the City of Woburn, the plaintiffs, some of whom were school teachers including Frank P. Callahan, sued the city for the balance of their

¹¹ Frye vs. School Committee of Leicester, 300 Mass. 537.

¹² Ibid.

lawfully fixed salaries, unpaid because of insufficient appropriations. The Superior Court of Middlesex found in favor of the plaintiffs. The defendant, the City of Woburn, alleged exceptions and the Supreme Judicial Court sustained the exceptions in favor of the city. In its decision the Supreme Court stated that teachers who are not employed at discretion, although not covered by the provisions of sections 41, 42, and 43 of chapter 71 of the General Laws, are nevertheless under contract.¹³

Making of Rules Determining Policy Need not be by a Two-Thirds Vote -- This opinion was an outcome of the decision of the Supreme Court in the case of Fernell B. Houghton vs. the City of Somerville in which the petitioner filed for a writ of mandamus in the Supreme Court, petitioning for reinstatement to her position as a teacher in the public schools of Somerville. The petitioner was dismissed after the school committee voted to bar married women from teaching in the school system. The petitioner contended that the school committee had gone beyond its constitutional power in making this rule.

The Supreme Court in finding in favor of the respondent (the City of Somerville) said in part that there was no requirement in section 41 that the making of rules determining a question of policy shall be by a two-thirds vote, even

¹³ Callahan vs. Woburn, 306 Mass. 265.

though the operation of such rules may almost inevitably result in some dismissals.¹⁴

Rule Dismissing Married Teachers is Constitutional -- In the decision of the Houghton case stated above the Supreme Court held that a rule adopted by the school committee giving them the power to dismiss married school teachers was not unconstitutional as impairing the obligation of contract because the employment under this section is at "discretion" and always subject to the policy making powers of the committee.¹⁵

Dismissal of a Teacher or Superintendent must be in Conformity with Section Forty-two -- In the case of Graves vs. the School Committee of Wellesley, in which S. Monroe Graves petitioned the Supreme Court for a writ of mandamus reinstating him to his former position as Superintendent of Schools in Wellesley, the Supreme Court stated in ordering his reinstatement that a superintendent holding his position under the provisions of section forty-one of chapter 71 is not subject to dismissal except in conformity to section forty-two of the same chapter.¹⁶

A Vote to Promote a Teacher on Tenure can be Revoked before Effective Date -- In the case at hand, McDevitt vs. Malden,

¹⁴ Houghton vs. School Committee of Somerville, 306 Mass. 542.

¹⁵ Ibid.

¹⁶ Graves vs. School Committee of Wellesley, 299 Mass. 80 (discussed more fully under section 42).

John W. McDevitt petitioned the Supreme Court for a writ of mandamus ordering the school committee of that city to reinstate him to the position of principal of a combined junior high school and elementary school at a salary higher than he had been getting, a position to which he had been elected by the school committee on December 17, 1935.

On January 6, 1936, after a city election had brought about a change in the personnel of the school board, the new board voted that "the Superintendent be instructed not to recognize" the vote of December 17, "inasmuch as it did not conform with section 59 of chapter 71 of the General Laws of Massachusetts and that the position be declared vacant." That section provides that superintendents of schools "shall recommend to the committee teachers, textbooks, and courses of study."

The court, in ruling against the petitioner, stated that the general managerial powers of the school committee continued to exist after December 17, 1935. Those powers included the power to change by a majority vote the duties of teachers on tenure at discretion. The court also stated that the fact that a majority of the committee was mistaken that the vote of December 17 was invalid because it had not recommended the petitioner, that reason was not the dominating reason for the vote of January 6, and that the petitioner was not entitled to the increase in salary as it was not the intention of section 43 to protect a salary the right to which

never became vested.¹⁷

Terms of Sections Forty-one and Forty-two may be Rendered Ineffective -- Following is an opinion of an attorney general concerning the effect which a change in the city charter would have upon the tenure of office of teachers in the City of Pittsfield:

Statute 1932, Chapter 280, section 37, dealing with a revision in the city charter, says as far as is applicable: 'Said committee shall appoint annually, but not of their own number, a superintendent of schools and such other subordinate officers, teachers and assistants, including janitors of school buildings, as it may seem necessary for the proper discharge of its duties'

Said statute of 1932, chapter 280, section 37 provides in effect that teachers shall be appointed only for terms not in excess of one year. This provision is entirely inconsistent with the terms of General Law, chapter 71, relative to the election of teachers 'to serve at its [the school committee's] discretion', as the quoted words are used in chapter 71, sections 41 and 42. As used in said sections 41 and 42 the phrases 'serve at its discretion', 'to serve at discretion' and 'employed at discretion' connote employment not for a period with a fixed and definite maximum length, but for an indefinite period. Hence the provisions of said General Law, chapter 71, sections 41 and 42, with relation to the tenure of teachers who are chosen to serve at discretion, have no application to teachers who are appointed annually, as those functioning under the newly adopted charter of Pittsfield are to be. In other words, the terms of said section 41 and at least the second sentence of section 42, are rendered ineffective as to the teachers of Pittsfield by the passage and adoption of said Statute 1932, chapter 280, when it becomes fully effective as described in its section 46.

¹⁷ McDevitt vs. School Committee of Malden, 298 Mass. 213.

Teachers have no vested interest in the tenure of their offices that the same may not be altered or destroyed by an act of the Legislature, so that teachers elected prior to the passage of said chapter 280 will be in no different case than others after the act becomes effective in this respect.¹⁸

The citizens of Pittsfield hearkened to the opinion of the attorney general in this instance as the act was not presented on the ballot for ratification at the city election until it had been amended by the legislative act of 1933, chapter 231, section 4, which concerns itself with the employment of teachers and is quoted herewith:

Section thirty-seven of chapter two hundred and eighty of the acts of 1932 is hereby amended by striking out the third paragraph and inserting in place thereof the following: . . . Said committee shall annually elect one of its number as chairman to serve in the absence of the mayor, shall annually appoint one of its number to attend the meetings of the city council and shall annually appoint one of its number as secretary, who shall be under its direction and control. Said committee shall elect teachers and a superintendent of schools annually, except as provided by section forty-one of the General Laws, and may dismiss or suspend such teachers and superintendent, subject to sections forty-two of said chapter seventy-one.¹⁹

Chapter 280 of the acts of 1932 as amended by chapter 231 of the acts of 1933 was ratified at the next city election at Pittsfield.

¹⁸ Opinion of the Attorney General (1933), 28.

¹⁹ Mass. Statutes, 1933.

Answers to Questions on Section Forty-one.

1. What were the conditions of employment prior to the enactment of the law? -- Prior to the enactment of the tenure law, a school committee could discharge a teacher at any time.
2. How inclusive is the power of the school committee under this law? -- The power of the school committee under this law is broad and ample and construed in the most general terms.
3. Does the law apply to teachers other than those on tenure? -- Section 41 applies only to teachers who are on tenure and not to one employed for a single year.
4. Must tenure be granted to a teacher who is reappointed after three consecutive years of service? -- Yes.
The three year period of this statute cannot be lengthened by the school board.
5. What is the legal meaning of the term "discretion"? -- Discretion means a decision of what is just and proper in the circumstances.
6. Does the law apply to "part time" teachers? --
Section 41 recognizes no separate classification of "part time" teachers. The sole test mentioned is "service for three previous consecutive school years."

CHAPTER IV

SUPREME COURT DECISIONS ON SECTION FORTY-TWO

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The same plan will be followed in the presentation of the Supreme Court decisions applying to section 42 as was followed with section 41.

Section Forty-two -- The important points of section 42 are as follows:

The school committee may dismiss any teacher, but in every town except Boston no teacher . . . shall be dismissed unless by a two-thirds vote of the whole committee. . . . a teacher or superintendent employed at discretion . . . shall not be dismissed except for inefficiency, incapacity, conduct unbecoming a teacher or superintendent . . . nor unless at least thirty days, . . . prior to meeting at which vote is to be taken, he shall have been notified of such intended vote; nor unless, . . . he shall have been furnished . . . with a written charge or charges of the cause or causes for which his dismissal is proposed; nor unless, . . . he has been given a hearing before the school committee . . . and at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless the charge or charges have been substantiated; nor unless, in the case of a teacher, the superintendent shall have given the committee his recommendations thereon. Neither this nor the preceding section shall affect the right of a committee to suspend a teacher or superintendent for unbecoming conduct, or to dismiss a teacher whenever an actual decrease in the number of pupils . . . renders such action advisable. No teacher or superintendent who has been lawfully dismissed shall receive compensation for services rendered thereafter, or for any period of lawful suspension followed by dismissal.

The items of importance in section 42A, the most recent amendment to section 42, are:

No principal or supervisor who has served in that position for over three years shall . . . be demoted for inefficiency . . .; nor unless, at least thirty days . . . prior to the meeting at which the vote is to be taken, he shall have been notified of such intended vote; nor unless, . . . he shall have been furnished by the committee with a written charge or charges of the cause or causes for which his demotion is proposed; nor unless, . . . he has been given a public hearing before the school committee, . . . at which he may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them; nor unless the charge or charges have been substantiated; nor unless the superintendent shall have given the committee his recommendations thereon.

It may be seen from inspection that section 42A is phrased similar to section 42 in order to give the same protection to principals and supervisors as is given to teachers and superintendents. This amendment is of such recent enactment that no cases have been brought to the Supreme Court for decisions concerning it. The following decisions and interpretations must of necessity be confined to section 42. It must be borne in mind, however, that some of the decisions following would be considerably different if section 42A had been in effect. It is also true that many of the decisions are based upon the law as it existed in the past.

A study of section 42 brings out a considerable number of questions which naturally arise in connection with this statute, some of which are:

1. Must the school committee elaborate on specifications for dismissal?

2. Is the statutory power of a school committee strictly or freely construed?
3. What is the meaning of the term "judicial investigation" as it applies here?
4. What is the meaning of the word "substantiated" as it applies here?
5. What teachers are covered by this section?
6. Does a vote of dismissal indicate that the charges have been substantiated?
7. Must the school committee always act in the interest of the schools?
8. Is the committee empowered to change duties of a teacher on tenure?
9. May counsel appear for the committee?
10. Must recommendation of superintendent favor dismissal?
11. What constitutes "good cause"?
12. Must a board member who is prejudiced withdraw from board during vote on dismissal?
13. Does the section afford any protection to a teacher on tenure over one not on tenure if a dismissal is required because of a decrease in enrolment?

The answers to the above questions are found following the Supreme Court decisions which are presented below.

Provisions of Section Forty-two Indicate Purpose of General Court to Cover Field of Relations between Teachers and

Committees -- The Supreme Court ruled in the case of Paquette vs. Fall River that the provisions of sections 42 and 43 of chapter 71 indicate the purpose of the General Court to cover the field of relations between teachers and school committees and not leave operative general rules arising from implications which would govern the rights between independent parties.²⁰

Charges must be Substantiated -- In an action of tort, previously before the Supreme Court in 286 Mass. 440, Elizabeth S. Caverno brought suit against the defendant Fellows, Superintendent of Schools of the City of Gloucester, the defendant Johnson, principal of the high school of said city, and the defendant Harris, Supervisor of English in said high school, alleging malicious interference with the plaintiff's contract of employment as a teacher in said high school and maliciously procuring her dismissal as such teacher by the school committee of said city.

In the case previously before the Supreme Court, the plaintiff alleged that the defendants "unlawfully and without justifiable cause did conspire to have said plaintiff dismissed from her position as a school teacher" The defendants demurred to the declarations on the grounds that no particular charge was specified. The Supreme Court sustained the demurrer because there was no tort set out as

²⁰ Paquette vs. Fall River, 278 Mass. 172 citing Lowell vs. Lowell, 265 Mass. 353.

to a single defendant.

Thereafter the declaration was amended to read "for malicious interference . . ." as stated above. The case went before a single justice of the Supreme Court who ruled in favor of the defendants. The plaintiff alleged exceptions and the case went to the full court. The full court in overruling the exceptions stated that there was no evidence that the conduct of any of the defendants was actuated by ill will toward, or a purpose to harm, the plaintiff, rather than by a justifiable purpose to perform their respective duties; and that prior to 1934 there was no requirement that the charges against a teacher be "substantiated" in a proceeding before the school committee in the nature of a judicial investigation.²¹

Judicial Investigation a Prerequisite to Removal -- In a petition for a writ of mandamus to compel the school committee of Wellesley to reinstate him into the office of Superintendent of Schools (Graves vs. Wellesley), S. Monroe Graves claimed that the school committee offered no evidence to substantiate the charges which included: "Your failure and apparent inability to create and maintain the school system as one continuous and consistent whole"

The Supreme Court, in sustaining the petition, stated

²¹ Caverno vs. Fellows, 300 Mass. 331.

that before chapter 123 of the acts of 1934 was passed, no judicial investigation was required as a prerequisite to removal. The committee in good faith could, by the requisite majority, dismiss a superintendent of schools or a teacher without any legal cause. However, as the petitioner was given a hearing at which no evidence was introduced in support of the charges against him, mandamus will lie to enforce compliance with General Law chapter 71, section 42, as amended by Statute 1934, chapter 123, which requires substantiation of charges and judicial investigation as prerequisites to dismissal.²²

Section Forty-two must be Complied with -- Teachers on tenure at discretion cannot be dismissed from the teaching force without compliance with this section. This fact was emphasized in the case of McDevitt vs. School Committee of Malden which was mentioned previously with section 41.²³

Notification of Appointment of a Successor is not a Compliance -- It was brought out in the case of Graves vs. Wellesley, mentioned above, that a dismissal of a superintendent of schools employed by a town at discretion was not in conformity with section 42 as amended by Statute 1934, chapter 123, where the committee notified him that they had

²² Graves vs. School Committee of Wellesley, 299 Mass. 80.

²³ McDevitt vs. School Committee of Malden, 298 Mass. 213.

chosen his successor before even intimating to him that they proposed to dismiss him. Manifestly such action was not in accordance with judicial investigation.²⁴

School Committee not Required to Elaborate on Specifications

for Dismissal -- A petition by Alice T. Corrigan (Corrigan vs. New Bedford), the principal of a public school in New Bedford for a writ of mandamus to compel the school committee to furnish her full and complete specifications of the reasons assigned by them for their contemplated action in proceeding to vote upon her dismissal provoked the following decision from the Supreme Court, after the petitioner took exception to the decision of a single member who had dismissed the petition: "Information given the principal of a public school at her request by the school committee stating that 'the committee's dissatisfaction with her work and the belief that she has not demonstrated constructive leadership and necessary administrative capability' was sufficient compliance with section 42 of chapter 71, as to statement of reasons, and the school committee cannot be required to give further specifications in response to the request." On this ground the exception of the petitioner was overruled.²⁵

The Statutory Power of a School Committee to Discharge Teachers

²⁴ Graves vs. School Committee of Wellesley, 299 Mass. 80.

²⁵ Corrigan vs. School Committee of New Bedford, 250 Mass. 334.

has always been Freely Construed -- This interpretation of section 42 was brought out in the case of Davis vs. School Committee of Somerville which resulted from a petition to the Supreme Court for a writ of mandamus by Hazel M. Davis to restore her to active service as a teacher in the public schools in the City of Somerville.

The petitioner, employed on tenure in Somerville prior to her unrequested retirement by the school committee, claimed failure on the part of the school committee to notify the retirement board within five days after her dismissal with a fair summary of the facts relating to her removal and that her removal consequently became null and void.

The Supreme Court said, in dismissing the petition, that one of the most important duties involved in the management of a school system is the choosing and keeping of proper and competent teachers. The success of a school system depends largely on the character and ability of the teachers. Unless a school committee has authority to employ and discharge teachers it would be difficult to perform properly its duty of managing a school system. The statutory powers of the school committee to discharge teachers has always been freely construed.²⁶

Interpretation of Term "Judicial Investigation" and Word "Substantiated" as They Apply to Section Forty-two -- It was

²⁶ Davis vs. School Committee of Somerville, 307 Mass. 334.

brought out in the now familiar case of Graves vs. School Committee of Wellesley that a hearing under General Law (Tercentenary Edition) chapter 71, section 42, as amended by Statute 1934, chapter 123 is in the nature of a judicial investigation after preferment of charges and notice, and the establishment of sufficient cause for dismissal by adequate evidence. It was also stated that the word "substantiated" has been defined to mean "to establish the existence or truth of, by true or competent evidence."²⁷

This Statute in Substance and Effect Requires a Hearing upon Evidence -- In Graves vs. School Committee of Wellesley the Supreme Court in sustaining the petition pointed out that disbelief of testimony of witnesses called by a superintendent in his behalf is not the equivalent of evidence in support of the charges produced by the committee, and that nothing can be treated as evidence which is not introduced as such. It further stated that the respondents (committee) called no witnesses and offered no evidence and the petitioner did call witnesses who were wholly favorable to the petitioner and that disbelief of testimony of witnesses on the part of members of the school committee is not the same as evidence against the petitioner.²⁸

²⁷ Graves vs. School Committee of Wellesley, 299 Mass. 80.

²⁸ Ibid.

Similarly, in *Moran vs. School Committee of Littleton* which is discussed in detail further along in this chapter, the Supreme Court brought out that a decision made by an administrative board after a hearing required in a quasi-judicial proceeding is a nullity if based on evidence known only to members of the board and not presented at the hearing.²⁹

Dismissal is not merely a Change in Assignment of Duties --

In *Boody vs. School Committee of Barnstable*, Louis M. Boody petitioned the Supreme Court for a writ of mandamus to restore him to the position of supervising principal of the high and junior high schools.

Mr. Boody had served on tenure in the town of Barnstable as a teacher and a principal for many years. In 1929 the school committee of three members elected the petitioner as a supervising principal of the high and junior high schools. He performed these duties until the spring of 1930 when the committee was increased in membership to five members and in September 1930 the enlarged committee voted to change Mr. Boody's duties to those of a teacher in the high school. No change in salary was made and no notice of the committee's intended vote was received by the petitioner.

The case was heard by an auditor who ordered the petition dismissed. The petitioner alleged exceptions. In overruling

²⁹

Moran vs. School Committee of Littleton, 317 Mass. 591.

the exceptions the Supreme Court said that no limitation is placed by this section on the power of a majority of the school committee to change or lessen the duty assigned to a teacher.

The court also said: "The dismissal contemplated under section 42 of chapter 71 of the General Laws is a complete separation from the schools of the town; and it is not a mere change in assignment of duties resulting in lessened authority or scope of employment. A principal is a teacher who is entrusted with special duties of direction and management."³⁰

School Committee Empowered to Change Duties of a Teacher on Tenure -- The Supreme Court mentioned in ruling on the case of McDevitt vs. School Committee of Malden, in which a teacher who had been promoted to a principalship of a junior high school and demoted to a teacher before taking over the duties of a principal attempted to be reinstated as principal, that the general managerial powers of the school committee include the power to change by a majority vote the duties of teachers on tenure at discretion and to assign them to new duties, or to continue them in their existing duties, or to return them to duties already performed, although such teachers cannot be dismissed from the teaching

³⁰ Boody vs. School Committee of Barnstable, 276, Mass. 134.

force without compliance with section 42, chapter 71 of the General laws.³¹

A Principal Assigned to Duty as a Grade School Teacher is not "Dismissed" -- In the case of Downey vs. School Committee of Lowell, the Supreme Court ruled that a principal of a grammar school who has been assigned as a teacher in grammar school cannot come under the protection of section 42 as regards dismissal, as such person has not been dismissed.³²

Hearing is a Condition Precedent when Requested -- A teacher, F. Gladys Perkins, on tenure in the public schools of Quincy, was notified that she was to be dismissed. She requested a hearing and specifications which were furnished. At the hearing on November 26, 1940, and after the close of the evidence when arguments of counsel were heard, only five of the seven members of the committee were in attendance.

On December 10, 1940, the entire committee of seven members voted on her dismissal. The vote was six for dismissal and one member voted present.

Miss Perkins petitioned the Supreme Court for a writ of mandamus commanding the respondents (the committee) to restore her to her position. The case was transferred to the Superior Court, where the judge found the facts as stated in

³¹ McDevitt vs. School Committee of Malden, 298 Mass. 213.

³² Downey vs. School Committee of Lowell, 305 Mass. 329.

the auditor's report. It then was reported to the Supreme Court for determination.

The Supreme Court in rendering a decision in favor of the petitioner said that it was essential that a quorum of the committee be present at the hearing. The requirements for "a two-thirds vote of the whole committee" and for a hearing "before the school committee" necessarily imply that a quorum of the committee for the purpose of such a hearing must consist of not less than two-thirds of the whole committee.³³

Participation in Hearing is Condition Precedent to Vote for Dismissal -- The following opinion was handed down in Perkins vs. Quincy mentioned above.

Where a hearing is requested by a teacher, such a hearing 'before the school committee' of the nature described in section 42 of chapter 71 of the General Laws as amended by Statute 1934, chapter 123, is a condition precedent to dismissal of the teacher.

A member of a school committee who was not present at a hearing held by the committee under section 42 . . . , did not participate in the hearing although thereafter he read the whole stenographic report. Therefore, the votes of two members of a school committee who did not participate in the hearing 'before the school committee', could not be counted in the 'two-thirds vote of the whole committee' required to dismiss a teacher.

Section 42, as amended, in providing for a hearing before the school committee at which the teacher 'may be represented by counsel, present evidence and call witnesses to testify in his behalf and examine them' contemplates that each

³³ Perkins vs. School Committee of Quincy, 315 Mass. 47.

member of the committee who votes for dismissal shall be in the favorable position for decision of the matter that results from hearing and seeing the witnesses.³⁴

Vote to Dismiss is Vote that Charges have been Substantiated -- Again in Perkins vs. School Committee of Quincy, the Supreme Court pointed out that a "two-thirds vote of the whole committee" to dismiss a teacher is, in substance, a vote that the charge or charges against that teacher have been "substantiated" by evidence introduced at the hearing. It is not a vote that as a matter of general policy, irrespective of the evidence introduced at the hearing, the teacher should be dismissed.³⁵

A Vote by a School Committee Member not Cast on Merits of the Question is not Valid -- In two petitions filed in the Supreme Court for a writ of mandamus (Sweeney vs. School Committee of Revere), the first was to direct the school committee of Revere to reinstate Leroy E. Sweeney as principal of the junior high school and the second was to direct said committee to reinstate the other petitioner, William F. Pollard, as assistant principal of the senior high school, both at their former salaries.

The school committee voted to consolidate the junior and senior high schools and in so doing voted to retain

³⁴ Ibid.

³⁵ Ibid.

Sweeney and Pollard at lower salaries as teachers. There was no evidence of a superintendent's recommendation that the positions should be abolished. In the case of Pollard the record clearly showed that the votes of two members of the committee were actuated by feelings of political resentment.

The full court in sustaining Pollard's petition with costs stated in part that the votes of the two committee members who were known to have been actuated by ill-will must be discounted and that therefore the vote dismissing Pollard failed of the necessary two-thirds and the petitioner must be reinstated to his former position.

The court found the auditor's report to be as stated in the case of Sweeney. Consequently the votes of the two members which were discounted in Pollard's case could not be so treated here. Furthermore, the court ruled that the effect of this vote on the salary of Sweeney was not within the scope of section 43 as he was the only person of his class. This petition was dismissed.³⁶

A Teacher who has not Received Required Notice cannot be Dismissed -- In Sweeney vs. School Committee of Revere, the Supreme Court stated further in respect to the other petitioner, Pollard:

³⁶ Sweeney vs. School Committee of Revere, 249 Mass. 525.

We do not consider that we are required to allow such a board to nullify the plain and salutary provisions of this statute by simply covering their unlawful acts with a virtuous name. The committee, to whose attention section 42 had been expressly called by one of its members, could not do indirectly that which it could not do directly. Pollard could not be dismissed as assistant principal of the high school unless he received the customary thirty days notice, as it was found that under the consolidation, the administrative duties of the principal of the combined schools would be so increased that the position of assistant principal at least would be as essential as it was before such reorganization.³⁷

But it was stated in *Toothaker vs. School Committee of Rockland*, a case which is discussed below, that it was not necessary under section 42 to give a superintendent of schools notice that the committee was to vote on his dismissal at a certain meeting.³⁸ This ruling was interpreted as dealing with a specific meeting. The superintendent had to be given the customary notice, but the committee was not required to specify the meeting at which the vote was to be taken.

Committee is Bound to Act for Welfare of Schools -- In *Toothaker vs. Rockland*, Oliver H. Toothaker petitioned the Supreme Court for a writ of mandamus to compel the school committee of the town of Rockland to reinstate him to his former position as superintendent of schools.

The petitioner had been employed on tenure in his posi-

³⁷ Ibid.

³⁸ *Toothaker vs. School Committee of Rockland*, 256 Mass. 584.

tion. The school committee of the town consisted of three members, two of whom were not favorable to the petitioner. The dismissal of the superintendent was the outstanding issue of the town election campaign in the year 1925 when one of the two committee members mentioned above was elected to office.

On receiving notice of the committee's intended action to obtain his dismissal, the petitioner requested a hearing and reasons for dismissal. He was notified that the reasons were "lack of harmony with the committee which was detrimental to the welfare of the schools, and the belief that we can obtain and maintain a higher standard . . . with the assistance of some superintendent other than yourself." The petitioner was dismissed at a meeting of the school board on June 25, 1925.

The case was first referred to an auditor, then heard by a single justice who denied the petition. The case then went to the full body of the Supreme Court which upheld the decision of its single justice who said in part:

The vote to dismiss the petitioner was valid. Upon the evidence of the report of the auditor, I am unable to conclude that the action of the members of the committee was dictated solely by personal ill will. The vote of the town had no binding or legal effect to control the action of members of the committee; but they could consider in deciding what was for the welfare of the schools the feeling of large numbers of citizens towards the superintendent.³⁹

Lack of Harmony and Cooperation if Detrimental to Welfare of Schools are Sufficient Grounds for Dismissal -- In Toothaker vs. Rockland the single justice of the Supreme Court stated further as follows:

Dealing with the matter as one of discretion, I do not feel that one whose usefulness as a superintendent is so doubtful in view of the circumstances disclosed by the evidence, should be retained in office by this court; even though his ability and willingness to render good service to the schools of Rockland are as great as, from the evidence, I believe them to be, and although his dismissal is so likely to be a cause of regret to the committee and the town.⁴⁰

Adjournment of Meeting Concerning Dismissal until a Late Date in Compliance with Section Forty-two -- In the same case, Toothaker vs. Rockland, it was decided that a meeting of a school committee of three at which one of the committee did not attend but of which he had sufficient notice was in compliance with section 42, and the members present could lawfully adjourn until a later day when final action upon the dismissal of the superintendent was taken by a two-thirds vote.⁴¹

Counsel May Appear for the Committee -- The Supreme Court ruled also in Toothaker vs. Rockland that it was not contrary to section 42 for counsel to appear for the committee at a hearing on dismissal. "On the contrary, it might conduce to

⁴⁰ Ibid.

⁴¹ Ibid.

the regularity and validity of the action taken.⁴²

"Superintendent to Recommend Dismissal" Applies to All Public Schools -- Duffey vs. School Committee of Hopkinton is a case in which Ellen L. Duffey petitioned the Supreme Court for a writ of mandamus to secure reinstatement as a teacher in the public schools of Hopkinton, a position from which the petitioner alleged she was wrongfully removed.

Miss Duffey was employed on tenure when she was notified of the intended action of the committee and the reason given was "conduct unbecoming a teacher and insubordination." The superintendent did not recommend the dismissal. She was dismissed at a meeting of the committee held December 6, 1919.

The chief question presented was whether the Statute 1914, chapter 714, which required the superintendent's recommendation for dismissal, was applicable to a town like Hopkinton which was joined with other towns to form a superintendency union.

The Supreme Court in sustaining the petition and ordering the petitioner reinstated to her position formerly held said as follows:

The advice of the superintendent, who may be presumed to possess more than the ordinary skill and judgment touching the general competency and usefulness of teachers, may be quite as necessary in order to prevent injustice and to insure the highest possible efficiency of the public schools in the small town as in the larger centers.

⁴² Ibid.

No recommendation by the superintendent of schools was made as to the proposed dismissal of the petitioner; hence the school committee acted beyond their power in attempting to discharge the petitioner from service.⁴³

Recommendation of Superintendent Need not Favor Dismissal --

Sheldon vs. School Committee of Hopedale is a case in which Elba Sherburne Sheldon petitioned the Supreme Court for a writ of mandamus to compel the school committee of Hopedale to reinstate her as a teacher in the public schools of the town.

The petitioner was dismissed by the school committee on October 14, 1930, pursuant to a rule passed at a meeting on May 20, 1930, to instruct the superintendent of schools to "eliminate from our teaching force female married teachers." This vote of May was taken without prior specific recommendation in regard thereto by the superintendent.

The case was heard before a single justice who ordered the petition dismissed as the "committee throughout acted in good faith and in the belief that their rule was of benefit to the schools." The petitioner excepted and the case went before the full court. This body stated in part that it was not necessary to the validity of such dismissal that the recommendation to the committee by the superintendent under section 42 favor dismissal; that statute requires that the committee have the superintendent's advice, but it is not in-

⁴³ Duffey vs. School Committee of Hopkinton, 236 Mass. 5.

tended that their action be controlled thereby.⁴⁴

Thanksgiving Recess not a Vacation Period -- The case of Duffey vs. Hopkinton brought forth the opinion from the Supreme Court that the Thanksgiving recess is not a vacation within the meaning of section 42, requiring notice of dismissal "at least thirty days prior to the meeting exclusive of customary vacation periods."⁴⁵

Conduct Unbecoming a Teacher and Insubordination are Sufficient Grounds for Dismissal -- The Supreme Court decided also in Duffey vs. Hopkinton that where the reasons for which dismissal is proposed are "conduct unbecoming a teacher and insubordination", that is a sufficient compliance with the terms of section 42, at least in the absence of demand for more specific specifications.⁴⁶

"Good Cause" is any Ground that is in Good Faith -- Rinaldo vs. School Committee of Revere is a case in which Clara Rinaldo petitioned the Supreme Court for a writ of mandamus to secure her reinstatement as a teacher in the public schools of Revere.

The petitioner was serving on tenure in said City when the school committee passed a ruling that marriage of a woman teacher would operate as an automatic resignation of said teacher and that the regulation would apply to teachers on

⁴⁴ Sheldon vs. School Committee of Hopedale, 276 Mass. 230.

⁴⁵ Duffey vs. School Committee of Hopkinton, 236 Mass. 5.

⁴⁶ Ibid.

tenure. The petitioner was well aware of this rule, as her contracts contained express stipulations that marriage would terminate her contract, to which she assented. In June, 1935, she married. The following September the school committee would not permit her to teach, and on November 12, 1935, after a notice and a hearing, she was dismissed, the causes stated being her violation of the terms of the contract. There was no evidence of bad faith on the part of the committee.

The case was heard by a single justice who found material facts and reported the case for hearing to the full court. This body, in deciding on whether such a policy adopted by the school committee could be found to be "good cause" under section 42 stated as follows:

'Good cause' includes any ground which is put forward by the committee in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the committee's task of building up and maintaining an efficient school system. If the cause for dismissal is at least fairly debatable and is asserted honestly, and not as a subterfuge, that is enough. It is by no means limited to some form of inefficiency or misconduct on the part of the person dismissed. The statutory power was in fact followed.

On the basis of this finding, the Supreme Court dismissed the petition.⁴⁷

Hearing not Illegal if Case not Reached for Hearing until Late in Evening -- In the case of Houghton vs. School Com-

⁴⁷ Rinaldo vs. School Committee of Revere, 296 Mass. 167.

mittee of Somerville it was brought out that a hearing, under section 42, of a case which need take but a short time was not illegal in that the case was not reached for a hearing until 10:15 o'clock in the evening.⁴⁸

Reports of Conduct Resulting in Dismissal not Sufficient Evidence to Warrant an Action for Unlawful Interference --

The case of Caverno vs. Fellows, discussed at the beginning of this chapter, indicates that an action for unlawful interference, on the part of the plaintiff's immediate superior teacher in the high school, of the principal, and of the superintendent, with the plaintiff's right to continue as a teacher under tenure could not be maintained on evidence merely that the defendants made reports of conduct of the plaintiff which resulted in her dismissal by the school committee, there being no evidence that the conduct of any of the defendants was actuated by ill will toward, or a purpose to harm, the plaintiff, rather than by a justifiable purpose to perform their respective duties.⁴⁹

A Delay in Bringing Petition for a Court Writ does not Constitute Negligence to Bar It -- This case, Peckham vs. Mayor of Fall River, while not provoked by any of the sections under discussion, is cited because of a decision that might very readily be of use in any case based upon a petition for

⁴⁸ Houghton vs. School Committee of Somerville, 306 Mass. 542.

⁴⁹ Caverno vs. Fellows, 300 Mass. 331.

a writ of mandamus.

Lester M. Peckham filed a petition in the Supreme Court on April 22, 1925, for a writ of mandamus directing the mayor and commissioners of the reservoir commission of Fall River to reinstate the petitioner "in his employment as an ox driver in the reservoir department"

The petitioner was appointed to his position under civil service and was so employed until July 12, 1924, when he was suspended without notice and without a hearing although there was work to be done of which he was capable of doing and willing to do.

A single justice ordered the petition dismissed. Exceptions by the petitioner to this order brought the case to the full court. The full court, in reversing the order of the single justice and sustaining the petition, said that the petitioner could be dismissed only in the manner pointed out in sections 43 and 45 of chapter 31 of the General Laws which entitle a civil service employee to a hearing and that if the petition had been brought immediately after his suspension, he would have been entitled to relief. Consequently his delay from the date of his suspension to the date of petition does not bar relief nor constitute neglect.⁵⁰

Committee Member who is Biased or Prejudiced not Required to Withdraw from Board under Certain Conditions -- In Moran vs.

⁵⁰ Peckham vs. Mayor of Fall River, 253 Mass. 590.

School Committee of Littleton, the petitioner, John Geddes Moran, having been removed from his position as principal of the high school of Littleton after a public hearing upon charges preferred by the school committee, appealed from an order of the Superior Court dismissing a petition for a writ of mandamus which he brought to secure his reinstatement.

During his hearing before the committee, two of the three members who then constituted the committee testified under oath as witnesses, and were examined by counsel for the petitioner. Each of them after testifying resumed his duties as a member of the committee.

In affirming the order of the Superior Court dismissing the petition, the Supreme Court pointed out that it is a general rule based on necessity and designed to enable an administrative board to exercise its power where it might otherwise be barred from so doing on account of the bias, interest, or prejudice of one or more of its members, that a member who is biased or prejudiced against one on trial before the board is not required to withdraw from the hearing if no other board can hear and determine the matter being heard, especially if his withdrawal would deprive the board of the number of members required to take a valid affirmative vote.⁵¹

Committee Member who Testifies as Witness not Disqualified from Participating in Decisions of Committee -- The Supreme

⁵¹ Moran vs. School Committee of Littleton, 317 Mass. 591.

Court stated further in Moran vs. Littleton:

The mere fact, that at a hearing by a school committee of charges preferred by it under chapter 71, section 42 as appearing in Statute 1934, chapter 123 against a teacher serving at its discretion, two of its three members testified under oath as witnesses and were examined by the committee's counsel and cross examined by counsel for the teacher, did not disqualify the two from resuming their function as members of the committee and participating in its decision.⁵²

Error in Proceedings Prejudicial to Dismissed Teacher is Basis for Court Action -- The opinion was handed down in Moran vs. Littleton that a school teacher dismissed by the committee following proceedings under General Law chapter 71, section 42, as appearing in Statute 1934, chapter 123, is not entitled to a writ of mandamus to secure his reinstatement unless he proves that the school committee committed an error in such proceedings and that the error was prejudicial to him.⁵³

Admission of Affidavits as Evidence not Prejudicial if Charges Substantiated Otherwise -- The Supreme Court further stated in Moran vs. Littleton:

We think one has no just ground of complaint because an administrative board in conducting a hearing of charges against him has permitted the introduction of hearsay evidence [affidavits] when he has failed to show that the other evidence was not adequate to support the conclusion reached by the board. The burden was on him to prove that the decision resulted

⁵² Ibid.

⁵³ Ibid.

in a substantial injustice to him. That does not appear on this record.⁵⁴

Answers to Questions on Section Forty-two

1. Must the school committee elaborate on specifications for dismissal? -- A statement of reasons for dismissal is sufficient compliance with section 42, and a committee need not elaborate on such specifications.
2. Is the statutory power of a school committee strictly or freely construed? -- The statutory power of a school committee has always been freely construed.
3. What is the meaning of the term "judicial investigation" as it applies here? -- A hearing under section 42 is in the nature of a judicial investigation after preferment of charges and notice, and the establishment of sufficient cause for dismissal by adequate evidence.
4. What is the meaning of the word "substantiated" as it applies here? -- The word "substantiated" has been defined to mean "to establish the existence or truth of, by true or competent evidence."
5. What teachers are covered by this section? -- Teachers in all public schools are included in this section.

⁵⁴Ibid.

6. Does a vote of dismissal indicate that the charges have been substantiated? -- A two-thirds vote of the whole committee to dismiss a teacher is, in substance, a vote that the charges have been substantiated by evidence introduced at the hearing.
7. Must the school committee always act in the interest of the schools? -- The school committee must always act in a manner which will be to the best interests of the schools.
8. Is the committee empowered to change duties of a teacher on tenure? -- The general managerial powers of the school committee include the power to change by a majority vote the duties of teachers on tenure at discretion and to assign them to new duties.
9. May counsel appear for the committee? -- It is not contrary to section 42 for counsel to appear for the committee at a hearing on dismissal.
10. Must recommendation of superintendent favor dismissal? -- The statute requires that the committee have the superintendent's advice, but it is not intended that their action be controlled thereby.
11. What constitutes "good cause"? -- "Good cause" includes any ground which is put forward by the committee in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the

committee's task of building up and maintaining an efficient system.

12. Must a board member who is prejudiced withdraw from board during vote on dismissal? -- A member who is prejudiced against one on trial before a board is not required to withdraw from the hearing if no other board can hear and determine the matter being heard, especially if his withdrawal would deprive the board of the number of members required to take a valid affirmative vote.
13. Does the section afford any protection to a teacher on tenure over one not on tenure, if a dismissal is required because of a decrease in enrolment? -- At present a teacher on tenure has no protection over one not on tenure if a dismissal is required because of a decrease of enrolment. However, House Bill 365 which is due shortly for hearing before the Legislature is designed to protect the teacher on tenure if a dismissal is required because of a decrease of enrolment.

CHAPTER V

SUPREME COURT DECISIONS ON SECTION FORTY-THREE

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Section 43 of chapter 71 of the General Laws (Tercenary Edition) of the Commonwealth of Massachusetts is stated here.

Salary Law --

The salary of no teacher employed in any town except Boston to serve at discretion shall be reduced without his consent except by a general salary revision affecting equally all teachers of the same salary grade in the town. The salary of no superintendent so employed shall be reduced without his consent until at least one year after the committee has so voted.

A few questions have arisen in connection with this section. The questions are:

1. What effect does a reduction from principal to teacher have on salary?
2. Does section 43 cover a reduction of salary made in bad faith?
3. What is the interpretation of the term "same salary grade?"
4. Does the section protect a salary the right to which was never vested?
5. What is the effect of dismissal made in good faith before end of school year on remainder of salary?

The Supreme Court decisions on cases provoked by section 43 are presented herewith, following which the questions

listed above are answered.

Effect of Reduction of Rank on Salary -- In Downey vs. School Committee of Lowell where Miss Downey attempted to obtain court action to effect her reinstatement to the rank and salary of principal following a vote of the school committee to close the school of which she was principal and to reduce her to a teacher in another elementary school, originally at the same salary, but later at a lower salary, the Supreme Court said:

The fact that the petitioner was chosen as a grammar school principal, and was paid the same salary as other such principals, does not show that she was in the 'same salary grade' as the others after her school was closed and theirs was left open. She was not entitled to be classed with them as to salary after that marked change in situation occurred. After that change she was the only person in her 'salary grade' and section 43 afforded her no protection.⁵⁵

A similar decision was arrived at in Sweeney vs. Revere.⁵⁶

Reduction of Salary Made in Bad Faith -- The Supreme Court held in Downey vs. Lowell that there was nothing to show any want of good faith in the reduction of salary in this case. It said:

We assume without deciding that the employment of the petitioner by the school committee 'to serve at its discretion' prevented a reduction of salary made in bad faith for the purposes of punishment or favoritism, even though the specific provision of section 43 did

⁵⁵ Downey vs. School Committee of Lowell, 305 Mass. 329.

⁵⁶ Sweeney vs. School Committee of Revere, 249 Mass. 525.

not apply.⁵⁷

Interpretation of Term "Same Salary Grade" -- The Supreme Court clarified the term "same salary grade" in Paquette vs. Fall River. Here the court said:

The word 'grade' in this section is designed plainly to include all public school teachers employed in a particular municipality, regardless of the name of the school in which the service may be rendered. The word 'grade' is broad enough also to comprise tenure of office.

Clearly identity of salary is not the sole test in determining 'same salary grade'. It is only one factor in determining whether specified teachers are 'of the same salary grade'. In deciding whether a general salary revision affects all teachers 'of same salary grade', consideration must be given not only to salary received, but also to the sum of the factors comprehended within the scope of 'grade'. Two teachers, one having a contract for one year only and the other having a continuous and indeterminate service, cannot rightly be said to be in the same salary grade even though receiving identical sums as salary.⁵⁸

Section Forty-three not Intended to Protect a "Salary" the Right to Which never became Vested -- In McDevitt vs. Malden where the petitioner sought reinstatement to a position as principal and to be paid the salary which was voted with said position while he had never assumed such duties because of a vote of the next committee which declared said position vacant, and demoted him to his former rank, the Supreme Court stated that the petitioner was not entitled to the increase in salary as it was not the intent of section 43 to

⁵⁷ Downey vs. School Committee of Lowell, 305 Mass. 329.

⁵⁸ Paquette vs. School Committee of Fall River, 278 Mass. 172.

protect a "salary" the right to which never became vested.⁵⁹

Effect of Dismissal Made in Good Faith before End of School

Year on Salary -- In the case of Wood vs. Inhabitants of Medfield, Cornelius E. Wood attempted to recover \$150 alleged due him as unpaid salary as a teacher in the high school of Medfield in Superior Court without jury.

His contract for the year 1873-1874, with the understanding that he teach for the year, was \$1200. The school committee voted to close the school on May 29, 1874, and discharge the teacher. They notified the plaintiff that his services were no longer required but gave no reason for their action.

The Superior Court judge ordered judgment for the defendant. The plaintiff alleged exceptions and the case went to the Supreme Court. In overruling the exceptions the Supreme Court said that there was no authority in law by which a school committee can bind the town to pay for the services of a teacher after he shall have been discharged by the school committee acting under its obligations of duty.⁶⁰

Answers to Questions Concerning Section Forty-three --

1. What effect does a reduction from a principal to a teacher have on salary? -- If a teacher is, after said reduction, the only person of "the same

⁵⁹ McDevitt vs. School Committee of Malden, 298 Mass. 213.

⁶⁰ Wood vs. Inhabitants of Medfield, 123 Mass. 545.

salary grade", and has been demoted in good faith, he has no recourse through law to demand the salary that went with the higher rank.

2. Does section 43 cover a reduction of salary made in bad faith? -- A teacher who has been voted a reduction in salary may recover if the reduction was made in bad faith.
3. What is the interpretation of the term "same salary grade?" -- "Same salary grade" involves a consideration not only of salary received, but also the sum factors comprehended within the scope of "grade" such as tenure.
4. Does the section protect a salary the right to which was never vested? -- Section 43 does not protect such a salary.
5. What is the effect of dismissal made in good faith before end of school year on remainder of salary? -- There is no authority under law to compel a town to pay for services after a teacher has been discharged in good faith.

CHAPTER VI

SUPREME COURT DECISIONS AND OPINION OF
ATTORNEY GENERAL ON SECTION SIXTY-THREE

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SUPREME COURT DECISIONS AND OPINION OF ATTORNEY GENERAL ON SECTION SIXTY-THREE

Section 63 of chapter 71 of the General Laws (Tercentenary Edition) of the Commonwealth of Massachusetts is stated in part below.

Tenure of Office and Dismissal of Superintendents of School Unions --

Section 1. . . . It [the joint committee of the several towns] shall employ for a three year term, a superintendent of schools, determine the relative amount of service to be rendered by him in each town, fix his salary, which shall not be reduced during his term. . . . He may be removed, with the consent of the department, by a two thirds vote of the full membership of the joint committee. A superintendent in a union who has served continuously in the same union for more than three years and who has been employed at least twice as superintendent in said union, each for a term of three years, shall not be removed except for inefficiency, insubordination or other good cause, nor without full compliance with the provisions of section forty-two, relative to teachers and other superintendents, as to notice of intention to dismiss, specification of charges, hearing and substantiation of charges.

Section 2. Notwithstanding the provisions of section one of this act, a superintendent of a superintendency union in office on its effective date shall not be entitled to the benefits thereof except after he has been re-employed in said office.

The questions which have arisen in connection with section 63 are:

1. Do teachers come under this section?

2. Are acts of joint committee binding on each of the towns comprising the union?
3. Who can discharge a union superintendent?
4. Can a union superintendent be appointed for less than a three year term?
5. Can a union superintendent be dismissed while on tenure?
6. Has a joint committee the right to rescind a vote for a superintendent?

The Supreme Court decisions and the opinion of the attorney general on cases brought about by this section are presented below. They are followed by the answers to the above questions.

Teachers in a Superintendency Union not under Section Sixty-three -- The Supreme Court decided in the case of Duffey vs. School Committee of Hopkinton that section 42 included all teachers within the Commonwealth. Consequently there are no provisions for teachers in section 63.⁶¹

Joint Committee Agent for Each Town -- Freeman vs. Inhabitants of Bourne, was a case involving an action of contract on the part of the superintendent of the school district of Sandwich, Bourne, and Mashpee against the town of Bourne to recover salary which the plaintiff alleged was owed to him.

Howard S. Freeman was elected superintendent of said

⁶¹ Duffey vs. School Committee of Hopkinton, 236 Mass. 5.

district at a meeting of the joint committees on October 9, 1893, following a meeting at which the former superintendent, who was under indictment for adultery, had been dismissed. The school committee of the defendant town protested against such action and continued the former superintendent in office in that town. The plaintiff assumed his duties in the district on November 7, 1893 and was reelected again in April, 1894, to take effect June 15, 1894. Between these two dates the plaintiff received no salary from the defendant town.

The case was submitted to the Superior Court, and after judgment for the plaintiff, to the Supreme Court, on appeal. The Supreme Court in affirming judgment for the plaintiff said in part: "For the purposes of the statute (Statute 1888, chapter 431), the joint committee became the agents of each town, and their acts within the scope of their authority are binding upon each town."⁶²

Superintendent under Control of Joint Committee -- In *Freeman vs. Bourne* the Supreme Court said: "When several towns unite for the purpose of the employment of a superintendent of schools under the authority of section 63, such superintendent can be employed only by the joint committee, and can be discharged only by the joint committee, if the power of

⁶²

Freeman vs. Inhabitants of Bourne, 170 Mass. 289.

dismissal exists."⁶³

Union Superintendent must be Appointed for Three Years --

In a letter to the State Commissioner of Education dated December 3, 1919, the Attorney General stated in request to an opinion concerning the legality of electing a union superintendent temporarily for a period of six months: "It is my opinion that a superintendent must be employed for a three year term, regardless of when employment begins."⁶⁴

Union Superintendent may, under Certain Conditions, be

Dismissed while under Tenure -- In *Freeman vs. Bourne* the court decided that in the selection and employment of a superintendent of schools there is an implied condition which authorizes his dismissal, if circumstances arise which render him no longer able or fit to perform the duties of his position.⁶⁵

Committee may Declare Office of Union Superintendent Vacant --

Again referring to *Freeman vs. Bourne*, the Supreme Court ruled in this case that the pendency of an indictment for adultery against a superintendent of schools, chosen by a joint committee formed by the school committees of towns uniting for the purpose of the employment of a superintendent under this section, warrant the committee to declare his

⁶³ Ibid.

⁶⁴ Opinion of Attorney General, Vol. 5, p. 422.

⁶⁵ *Freeman vs. Inhabitants of Bourne*, 170 Mass. 289.

office vacant.⁶⁶

Right of a Committee to Rescind Vote for a Superintendent --

In Reed vs. School Committee of Deerfield and another, William A. Reed petitioned the Supreme Court for a writ of mandamus to compel the school committee of Deerfield and the petitioner's predecessor in office to recognize the vote of the joint committee of Hatfield, Leverett, and Deerfield which elected him as superintendent of the school union comprising those three towns.

At a meeting of the joint committee on April 7, 1900, the petitioner's predecessor, then in office, received a fraction of a vote over another candidate for the position of superintendent. The chairman declared that there had been no election, and the meeting was adjourned until April 21, 1900. The respondent, Barton, continued to serve as superintendent until this petition was filed.

At the meeting held on April 21, 1900, it was voted to rescind the vote of the previous meeting. The meeting then proceeded to the election of a new superintendent. The petitioner received twelve votes and Barton received eleven votes. The chairman declared the petitioner elected, and no objection was made thereto.

The petitioner was informed of his election as super-

⁶⁶ Ibid.

intendent of schools and began his duties on April 26, 1900. On May 7, 1900, he received a notice from the Deerfield committee that they would recognize Barton as superintendent.

The Supreme Court in sustaining the petition pointed out that, at the first meeting, the respondent, Barton, was elected and should have been elected by the chair. However, this was not done and the committee rescinded the vote which elected Barton. On this point the court stated: "We are of the opinion that it was within the power of the meeting to rescind its vote."⁶⁷

Answers to Questions Concerning Section Sixty-three --

1. Do teachers come under this section? -- Teachers do not come under this section, but under sections 41, and 42.
2. Are acts of joint committee binding on each of the towns comprising the union? -- The joint committee are the agents for each town, and their acts within the scope of their authority are binding upon each town.
3. Who can discharge a union superintendent? -- Where several towns unite for the purpose of employment of a superintendent of schools, such superintendent can be discharged only by the joint committee, if the power of dismissal exists.

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Reed vs. School Committee of Deerfield & another, 172 Mass. 473.

4. Can a union Superintendent be appointed for less than a three year term? -- A union superintendent must be employed for a three year term, regardless of when employment begins.
5. Can a union superintendent be dismissed while on tenure? -- A union superintendent can be dismissed while on tenure, if circumstances arise which render him no longer able or fit to perform the duties of his position.
6. Has a joint committee the right to rescind a vote for a superintendent? -- It is within the power of a joint committee to rescind its vote in this respect.

CHAPTER VII

CONCLUSION

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This study has offered first, in chapter two, a history of the laws regarding tenure which shows the development of these laws to the present day. It has offered also, in following chapters, an analysis of Supreme Court decisions and opinions of attorney generals dealing with the tenure laws. On the basis of the information contained in the previous chapters an attempt is made here to arrive at a conclusion which will answer the main question which provoked this study, namely: "What protection do the laws of Massachusetts give to me as a teacher in the public schools of the state in regard to the permanency of my position?" The introduction broke this question down into a series of more specific questions. The procedure here will be to answer these specific questions and use these answers as the basis for an answer to the general question.

Meaning of the Word "Tenure" and its Purpose -- Tenure is defined as "the term of holding office."⁶⁸ It is a status to which teachers, supervisors, principals and superintendents attain upon fulfillment of the conditions of the tenure statute. The purpose of the tenure statute has been declared

⁶⁸ Devlin, Joseph, Webster's New Standard Dictionary, the World Syndicate Publishing Company, p. 936.

to be the promotion of "good order and the welfare of the state and of the school system by preventing the removal of capable and experienced teachers at the political or personal whim of changing office holders."

Laws Pertaining to Tenure -- As has been pointed out previously, the laws regarding the tenure of teachers in Massachusetts are contained in sections 41, 42, 43, and 63 of chapter 71 of the General Laws (Tercentenary Edition) of Massachusetts.⁶⁹ Section 41 concerns itself with the conditions which must be met by a teacher in order to attain the tenure status and with the necessity of the school board's compliance. Section 42 treats of the procedure which must be followed by a school committee to dismiss a teacher and the rights to which a teacher has access if he is about to be dismissed. Section 43 deals with the salary rights of teachers and is included in this study because of the importance a reduction in salary plays in relation to the attractiveness of a position. Section 63 contains the law relative to the employment, tenure, dismissal, and salary of superintendents of superintendency unions.

Those Protected by Tenure Laws -- The Supreme Court has ruled that all teachers, supervisors, and principals employed in the public schools of the state, except in Boston, and all superintendents, except those in Boston and those employed by

⁶⁹ See Chapter II.

superintendency unions, are protected by the laws contained in sections 41, 42, and 43 of chapter 71. Union superintendents are protected by section 63 of the same chapter.

Conditions for Dismissal -- The conditions under which a teacher on tenure may be dismissed have been brought out quite clearly in several cases before the Supreme Court. In *Rinaldo vs. Revere*,⁷⁰ the decision was based on "good cause", a term existing in section 42. Here the court stated:

'Good cause' includes any ground which is put forward by the committee in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the committee's task of building up and maintaining an efficient school system. If the cause for dismissal is at least fairly debatable and is asserted honestly, and not as a subterfuge, that is enough. It is by no means limited to some form of inefficiency or misconduct on the part of the person dismissed.

It follows from the above definition that marriage of a woman teacher can be classed as "good cause" within the meaning of section 42 if a school committee honestly rules it so.

It is to be understood that the conditions for dismissal as stated in section 42 must be complied with entirely. The previous chapters contain many decisions in which the court compelled the school committee to reinstate a teacher for failure to comply with such items as a two thirds vote of the whole committee, thirty days notice, a hearing and specifications in writing if requested, substantiation of

⁷⁰ See Chapter III.

charges, and recommendation of the superintendent in the case of a teacher, supervisor, or principal. The same requirements are contained in section 63.

Dismissal of Teacher Serving on Tenure because of Decreased Enrolment -- As the law stands at present, a teacher serving on tenure may be dismissed if there is a sufficient decrease in enrolment to render a decrease in the teaching force necessary. Under such a condition the committee is not required to give a teacher a hearing or a notice, nor must charges be specified or substantiated in a judicial investigation. The law makes no provision to protect tenure teachers over non-tenure teachers in this respect although legislation is now pending to remedy this condition.

Power of School Committee -- "The power of the school committee", as stated in *Pulvino vs. Yarmouth*,⁷¹ "is conferred in the most general terms, and it is to be exercised whenever in the judgment of those to whom it is committed the public good for any cause requires it. Of this they shall be the exclusive judges."

The school committee must, in reappointing a teacher who has served for three consecutive previous years, appoint such teacher to serve at its discretion. In *Paquette vs. Fall River*, discretion was defined as "a decision of what is

⁷¹ Ibid.

just and proper in the circumstances."⁷² In connection with the powers of the school committee, it must be remembered that its powers are limited to the law and it cannot lengthen the three year tenure statute.

Reinstatement of a Dismissed Teacher -- The previous chapters record many cases where the Supreme Court has ordered reinstatement of teachers because the school committees failed to act in good faith or did not comply with each and every requirement of section 42 in effecting the dismissals.

Tenure Laws may be Rendered Ineffective -- A previous paragraph indicated the broad powers possessed by the school committee. This power is conferred on the school committee by the legislature. An opinion of an attorney general pointed out that as the legislature is empowered to enact laws, it is also able to render such laws ineffective.⁷³

Teacher should Assert Rights -- A tenure teacher who has been notified by the school committee of their intention to vote on his dismissal should lose no time in asserting his rights under the law if he believes the committee is acting unjustly. Such rights consist of receiving a hearing and a written statement of charges, if requested.

If a teacher has been dismissed and believes that the committee has acted unfairly, he should file in court a petition for a writ of mandamus to compel the committee to

⁷² Ibid.

⁷³ Ibid.

restore him to his position.

Reduction of Salary to Force Resignation -- If a teacher is the only one in "the same salary grade", his salary may be reduced in compliance with section 43. If, however, such reduction can be proved to have been made in bad faith, to force a teacher's resignation, that teacher may recover the loss of salary.

It is apparent from the opinions of the Supreme Court that the law gives a considerable amount of protection to the positions of teachers serving on tenure. It is mandatory that a school committee act in good faith, asserted honestly and not as a subterfuge, in effecting a dismissal of a tenure teacher. Furthermore, section 42 gives the teacher certain rights in connection with dismissal which are stated above in this chapter.

It is remotely possible that a school board could act in bad faith on a dismissal and cover their action under the cloak of acting in the best interests of the schools. With the exception of this possibility and that of a tenure teacher being dismissed because of decreased enrolment, the facts indicate that a tenure teacher receives a high degree of protection from unjust interference with his position in the public schools of Massachusetts. Statute 1934, chapter 123, increased greatly the degree of protection afforded a teacher on tenure.

Under such a high degree of protection as offered by the laws, it would prove unwise and useless on the part of a school committee to dismiss a teacher serving under tenure unless by so doing the committee was carrying out their primary duty of acting for the best interest of the schools.

APPENDIX I

COURT CASES AND OPINIONS IMPORTANT
TO THIS STUDY

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This chapter consists of a presentation in alphabetical order of the Supreme Court cases which were the main source of material for this study, followed by the two opinions of the attorney generals which were cited in previous chapters, in lieu of an annotated bibliography.

In the event that a reader is not familiar with the system of references used in connection with legal reports, an explanation is given here. All of the cases referred to in this study are cases that were decided on by the Supreme Judicial Court of the Commonwealth of Massachusetts. These cases are recorded in the "Massachusetts Reports" which is the official title of the publication that reports on the cases decided on by the Massachusetts Supreme Judicial Court. Consider as an example *Graves vs. School Committee of Wellesley*, 299 Mass. 80 (1937). The number 299 represents the number of the volume of the "Massachusetts Reports" in which the case is recorded. The "Mass." indicates that the case is recorded in said reports, and the number 80 represents the page on which the record of the case begins. The number 1937 is not usually found in an arrangement of this type, as the volume number gives some idea as to the approximate year in which the case went before the court. However, as the average reader will not be able to determine the year under the usual arrangement, the liberty has been taken here to include it for the reader's convenience.

Boody vs. School Committee of Barnstable, 276 Mass. 134, (1931) -- Louis M. Boody was employed on tenure by the School Committee of Barnstable, having served as a teacher and principal for many years. In 1929 the petitioner was elected by the committee, then consisting of three members, to be supervising principal of the high and junior high schools at an annual salary of \$3,600. He performed these duties during the school year of 1929-1930. In the spring of 1930, the membership of the school committee was increased from three to five, and on September 18, 1930, the enlarged committee voted, three to two, to change Mr. Boody's duties to those of a teacher in the high school. No change in salary was made. No notice was given Mr. Boody of the committee's intent to change his duties from principal to teacher prior to its meeting of September 18, 1930.

Boody petitioned the Supreme Court for a writ of mandamus to compel the school committee to reinstate him as a supervising principal. The case was heard before an auditor and single member of the Supreme Court who ordered the petition dismissed. The petitioner alleged exceptions and the case went before the full court.

The essential matter for decision before this body was whether under General Law chapter 71, section 42, as amended by Statute 1921, chapter 293, a majority vote or a two-thirds vote of the school committee was required where the duties of a teacher on tenure at discretion are changed from those of a principal to those merely of giving instruction as a teacher.

The court, in overruling the exceptions and finding for the respondent (school committee), stated that no limitation is placed by this statute on the power of a majority of the school committee to change or lessen the duty assigned to a teacher. "We do not interpret the law as creating a class of principals as distinct from teachers."

Callahan vs. Woburn, 306 Mass. 265 (1940) -- In an action of contract involving forty-one employees of the City of Woburn, the plaintiffs, some of whom were school teachers including Frank P. Callahan, sued the city for the balance of their lawfully fixed salaries, unpaid because of insufficient appropriations. The Superior Court of Middlesex found in favor of the plaintiffs. The defendant, the City of Woburn, alleged exceptions and the Supreme Court sustained the exceptions in favor of the city. The Supreme Court stated in its decision that section 34 of chapter 71 of the General Laws, dealing with expenditures in anticipation of appropriations, provides the only remedy for recovery. The court also brought out that teachers who are not employed at discretion, although not covered by the provisions of sections 41, 42, and 43 of chapter 71 of the General Laws, are nevertheless under contract.

Caverno vs. Fellows, 300 Mass. 331 (1938) -- This case was before the Supreme Court previously in 286 Mass. 440. The facts in the case, an action of tort, were the same in both cases with the exception that in the first case the plaintiff alleged that the defendants, Fellows, Superintendent of Schools in Gloucester, Johnson, principal of the high school of said city, and Harris, supervisor of English in the high school "unlawfully and without justifiable cause did conspire to have said plaintiff dismissed from her position as teacher in the high school and in pursuance of said conspiracy made false, fictitious and fraudulent charges to the members of the school committee of the said city of Gloucester and did hamper, obstruct and impede the said plaintiff

in her work as a teacher . . . and did watch and annoy her and did make false and fictitious charges, accusations and statements about and against her."

The plaintiff taught under tenure in the high school. She was faculty advisor for a school news column which was published occasionally in the local paper. Evidence showed that the plaintiff had had difficulties with all three defendants which led up to her discharge.

The defendants demurred to the declarations on the grounds that no particular false, fictitious, or fraudulent charge or act is specified. The Supreme Court sustained the demurrer to the declarations because there was no tort set out as to a single defendant.

The plaintiff then alleged malicious interference on the part of the defendants in an amended declaration and the case went before a single justice of the Supreme Court in *Caverno vs. Fellows*, 300 Mass. 331 who returned a directed verdict for the defendants. The plaintiff excepted and the case went before the full court. The court overruled the exceptions stating that there was no evidence that the conduct of any of the defendants was actuated by ill will toward, or a purpose to harm, the plaintiff, rather than by a justifiable purpose to perform their respective duties.

Corrigan vs. School Committee of New Bedford, 250 Mass. 334 (1924) -- This case was the result of a petition by Alice T. Corrigan, the principal of a public school in New Bedford, for a writ of mandamus to compel the school committee to furnish her full and complete specifications of the reasons assigned by them for their contemplated action in proceeding to vote upon her dismissal as principal.

She had been principal of the school in question for about twelve years before filing this petition. On June 29, 1923, the school committee voted: "At a meeting of the school committee to be held on October 19, 1923, a vote shall be taken on the question of the dismissal of Alice T. Corrigan, principal of the Betsey B. Winslow School, and that notice be sent forthwith to her of this intention by the committee." The petitioner then requested of the committee a statement "of its reasons for which her dismissal as principal is proposed." At a meeting of the committee held September 14, 1923, the committee assigned and stated the reasons to be: "The committee's dissatisfaction with her work and the belief that she has not demonstrated constructive leadership and necessary administrative capability." On September 28, 1923, the petitioner asked for more definite specifications to the committee's reasons assigned for her dismissal. The

committee refused the request and set October 19, 1923, as the date for a hearing.

The Supreme Court petition was filed October 18, 1923, and upon a hearing, a single justice denied the petition for a writ of mandamus. The petitioner excepted and the case went before the full court. In overruling the exceptions the court said in part: "Teachers are employed in the discretion of the school committee and discretion in itself must imply freedom to act according to one's own judgment. The only limitation on that freedom material to this case is that the committee shall upon request of the teacher give a statement of the reasons for which the dismissal is proposed. These reasons were given and are a sufficient ground for removal."

Davis vs. School Committee of Somerville, 307 Mass. 354 (1940) -- This case involved a petition for a writ of mandamus to restore the petitioner, Hazel M. Davis, to active service as a teacher in the public schools of the City of Somerville. The case was heard by a single justice and then by the full body of the Supreme Court.

The petitioner had been employed on tenure in Somerville and prior to that time in the town of Acton and consequently had "completed more than twenty years of creditable service as a member of the Teachers' Retirement Association."

The petitioner claimed failure on the part of the school committee to notify the retirement board within five days after her dismissal with a fair summary of the facts relating to her removal and that her removal consequently became null and void and that she should be restored to active service without loss of compensation.

The court in dismissing the petition brought out that the statute requiring notice to the retirement board refers to civil service employees and not to teachers. The court said further: "One of the most important duties involved in the management of a school system is the choosing of competent teachers. The success of a school system depends largely on the character and ability of the teachers. Unless a school committee has authority to employ and discharge teachers it would be difficult to perform properly its duty of managing a school system."

Downey vs. School Committee of Lowell, 305 Mass. 329 (1940) -- Caroline A. Downey filed a petition in the Supreme Court for a writ of mandamus to require the school committee of Lowell to restore her to the rank and salary of a principal of a grammar school. A single justice found the facts to be as

stated in the report of an auditor and ordered the petition dismissed, but not on the grounds of discretion. The petitioner excepted to the order and the case went to the full court.

The facts in the case were these: The petitioner served, under tenure, as principal of a grammar school in Lowell at a salary of \$3,600 until June, 1937, when the school was closed by the committee in the interests of economy. At the reopening of schools in September, 1937, the petitioner, though elected as a principal, was assigned by the superintendent as a grade teacher in another school, under the principal of that school. She continued to receive the pay of a principal until the beginning of 1938, when by vote of the school committee her pay was reduced to that of a grade teacher, \$1,700 a year. She was the only grammar school principal without a school in which to act as principal. Various members of the school committee told her informally that when a vacancy occurred in a grammar school principalship she should have the place. But when in 1938 two such vacancies occurred, other persons were chosen to fill them.

The Supreme Court in overruling the exceptions stated in part: "The fact that the petitioner was chosen as a grammar school principal, and was paid the same salary as other such principals, does not show that she was in 'the same salary grade' as the others after her school was closed and theirs was left open. After that change, she was the only person in her 'salary grade' and section 43 afforded her no protection.

"We assume without deciding that the employment of the petitioner by the school committee 'to serve at its discretion' prevented a reduction in salary made in bad faith for purposes of punishment or favoritism, even though the specific provisions of section 43 did not apply.

"When no law has been violated, and no statute has made good faith essential to valid action, acts of administrative officers cannot be attacked in judicial proceedings on the ground that in fact these officers were not governed by the highest standards of impartial and unselfish performance of public duty."

Duffey vs. School Committee of Hopkinton, 236 Mass. 5 (1920) --
Ellen L. Duffey petitioned the Supreme Court for a writ of mandamus to secure reinstatement as a teacher in the public schools of Hopkinton, a position from which the petitioner alleged that she had been wrongfully removed.

The petitioner had been a teacher in the high school of Hopkinton from September, 1913, until December, 1919,

when she was dismissed by a two thirds vote of the committee. She was notified in writing by letter dated November 1, 1919, of the intention of the school committee to vote on the question of her dismissal at a meeting to be held on December 6, 1919. The petitioner was informed that the reasons for dismissal were "conduct unbecoming a teacher and insubordination." No recommendation was made by the superintendent.

The chief question presented was whether the school committee of a town like Hopkinton which was a member of a superintendency union was bound by Statute 1914 which required a superintendent's recommendation in connection with dismissal.

The Supreme Court said in ordering the petitioner reinstated: "The provision is broad in its language. It apparently includes all teachers within the commonwealth. The advice of the superintendent, who may be presumed to possess more than ordinary skill and judgment touching the general competency and usefulness of teachers, may be quite as necessary in order to prevent injustice and to insure the highest possible efficiency of the public schools in the small towns as in the larger centers.

"No recommendation by the superintendent of schools was made as to the proposed dismissal of the petitioner; hence the school committee acted beyond their power in attempting to discharge the petitioner from service."

The court also pointed out that the Thanksgiving recess was not a customary vacation period within the meaning of section 42.

Freeman vs. Inhabitants of Bourne, 170 Mass. 289 (1897) -- The joint committee of the superintendency union of Sandwich, Bourne, and Mashpee, at a special meeting on August 2, 1893, elected Delbert G. Donnocker to be superintendent to fill a vacancy caused by the resignation of the former superintendent. In September, 1893, in the Superior Court, County of Cumberland, and State of Maine, Donnocker was indicted for the crime of adultery. He was tried by jury, entered a plea of not guilty, and a verdict of guilty was returned. Exceptions filed by him were sustained by the Supreme Court of Maine and a new trial was granted. The case was tried again in Superior Court and resulted in the disagreement of the jury. The case was tried a third time and twenty-one days later was "nol prossed."

On October 2, 1893, at a special meeting of the joint committee the office of superintendent was declared vacant by a vote of nine in the affirmative; none in the negative.

The school committee of the defendant town protested the legality of the meeting and its action, and thereupon declined to take part in same. The meeting was adjourned for one week and on October 9, 1893, the joint committee chose the plaintiff to be superintendent "for the term of ten months at a salary of fifteen hundred dollars per annum." The school committee of the defendant town protested against such action. On October 28, 1893, a special meeting of the joint committee was held and on vote by ballot the actions of the meetings of October 2 and October 9 were ratified, the defendant town non-concurring and protesting.

The defendant town retained Donnocker at their portion of the salary and declined to receive the services of the plaintiff, although his services were legally tendered.

On April 23, 1894, the annual meeting of the joint committee was held and the plaintiff was regularly elected superintendent of schools to take effect from June 15, 1894. Assenting to this election, the defendant, after June 15, duly paid its proportionate share of the salary to the plaintiff and received his services. The plaintiff received no compensation from the defendant town from November 7, 1893 to June 15, 1894, and demanded payment for same, which he was always ready and willing to perform.

The case, an action of contract, was submitted to the Superior Court, and after judgment for the plaintiff, to the Supreme Court, on appeal. The plaintiff's right to recover was denied by the defendant on the grounds that if the power to dismiss a superintendent existed, it was not in the joint committee, but in the municipality; that there was no power to dismiss the superintendent; that the superintendent could be dismissed only for cause, and that no sufficient or legal cause of dismissal was disclosed.

The Supreme Court in affirming judgment for the plaintiff stated that the joint committee became the agents of each town; that in the selection and employment of an officer of such character there was an implied condition which authorized dismissal, if circumstances arose which rendered him no longer able or fit to perform the duties; and that where a superintendent was under indictment for adultery, it was competent for the committee to declare that he had become unfit to continue in that position.

Frye vs. School Committee of Leicester, 300 Mass. 357 (1939) --
This case was the result of a petition for a writ of mandamus in the Supreme Court, filed by Marjorie J. Frye, a former teacher in the public schools of Leicester to effect her re-

instatement to her former position. The issue depended on whether or not she had acquired the status of tenure. She began work in September, 1933, and taught regularly organized classes for three of the seven daily periods during that year. She was reelected for the years 1934-1935, 1935-1936, and 1936-1937.

The school committee claimed that because her last election took place on May 6, 1936, before the final expiration of her third consecutive school year, she had not served "for three previous school years" as required by statute, and that because she was originally employed as a "part time" teacher from September, 1933, to March, 1934, the time from September to March could not be included as a part of the three consecutive school years.

The Supreme Court pointed out, in ordering the petitioner reinstated to her former position, that the statute recognizes no separate classification of "part time" teachers, the sole test being "service for the three previous consecutive school years", and that a teacher must be deemed on tenure at discretion when he has actually served three consecutive school years, and has been elected for further service, even though the election has taken place before the expiration of the last three consecutive school years.

Graves vs. School Committee of Wellesley, 299 Mass. 80 (1937) -- The petitioner, S. Monroe Graves, sought a writ of mandamus to compel the school committee of Wellesley to reinstate him to his former position as Superintendent of Schools. He had been employed in that position since 1914 and in 1935 was holding the position on tenure. In July, 1935, the committee asked the petitioner to resign but he refused. In October, 1935, the committee wrote the petitioner urging him to resign before the expiration of the current school year which would occur in June, 1936. In February, 1936, the committee at a meeting stated that they could no longer wait for his resignation, that candidates for his position had been interviewed, and that another had already been appointed to succeed him.

Early in March, 1936, the petitioner was notified that it was the intention of the respondents to vote at a meeting to be held on April 7, 1936, that his employment would be terminated on July 31, 1936. The petitioner, on March 12, 1936, requested a statement of the charges. Under date of April 1, 1936, the chairman of the committee sent the petitioner a letter stating the charges, one of which was "the failure to create and maintain the school system as one

continuous and consistent whole." The petitioner answered stating that the reasons given were too general and requested specifications of details as to which his work had been unsatisfactory. This request was refused but the chairman of the school board stated that in order to assist the petitioner to better understand some of its charges it might be added: "The findings of the Survey Committee respecting (a) the lack of proper sequential order of study in the schools . . . surely reflect conditions which have existed in our schools with your sanction over a period of years. . . ."

Hearings were held by the committee on April 13, 23, 25, and 26, 1936. On April 27, 1936, the school board voted that the petitioner be dismissed as of July 31, 1936. The committee called no witnesses and produced no evidence in support of the charges and they called no witnesses and produced no evidence to substantiate the charges. The petitioner introduced much evidence in his behalf.

In sustaining the petition, the Supreme Court stated that there was no compliance with section 42 in that no evidence had been disclosed on the record which warranted a dismissal of the petitioner, no one of the charges had been substantiated, and there had been no judicial investigation. The Court stated further that nothing can be treated as evidence which is not introduced as such and that disbelief of testimony is not the equivalent of evidence in support of the charges produced by the school committee.

Houghton vs. School Committee of Somerville, 306 Mass. 542 (1940) -- Fernell B. Houghton, a former teacher in the public schools of the City of Somerville, petitioned the Supreme Court for reinstatement to her position.

The petitioner was discharged with the reason given that it was the policy of the school committee that the best interests of the school will be served by the elimination of married women teachers as evidenced and declared by a rule of the school committee. The rule provided that the marriage of a permanent teacher should "operate as an automatic resignation"; that no married woman should thereafter be elected as a permanent teacher; and that "No married woman now in the service shall hereafter be employed as a permanent teacher . . . except one who proves to the satisfaction of the school committee that she is living apart from her husband. . . ."

The petitioner argued that the rule of the committee was not the embodiment of an educational policy, and that the committee had gone beyond its true functions and had

set up an arbitrary and unreasonable discrimination on purely economic and not educational grounds against two different groups of married women.

The court, in dismissing the petition, held that the rule was within the policy making power of the school committee and was not unconstitutional on the ground of discrimination, as employment "at discretion" was always subject to the policy-making powers of the committee, to such rules as they might adopt in pursuance of these powers, and to the power of dismissal expressly set forth in the governing statute itself.

The court further ruled, in answer to allegations of the petitioner, that the school committee's hearing was not illegal because held in the evening or because the petitioner's case was not reached until 10:15 o'clock; also that the petitioner was dismissed by a "two-thirds vote of the whole committee" as required by statute and that there was no requirement in the statute that the making of rules determining questions of policy shall be by a two-thirds vote, even though the operation of such rules may almost inevitably result in some dismissals.

Knowles vs. City of Boston, 78 (12 Gray) Mass. 339 (1859) --
This case was an action of contract brought by Charlotte M. Knowles against the City of Boston to recover salary as a teacher in a public school in Boston for the quarter ending December 1, 1855.

The plaintiff was for several years an assistant teacher in Smith School, having been elected annually by the school committee, and received her salary quarterly for all services rendered by her before the first of September, 1855. On that day she entered on a new year of service in the same school and continued in that service until September 14, 1855, when the school was abolished by the committee, and the plaintiff notified that her services were no longer required. She was dismissed for no fault or direlection of duty on her part, but solely in the judgment of the school committee the public interest required that the school should be abolished.

The plaintiff demanded payment of the sum sued for, after December 1, 1855, and before bringing action. The defendants offered to be defaulted for a proportional part of the salary to the time of the plaintiff's dismissal, and the parties submitted the case to the decision of the Superior Court who gave judgment for the plaintiff for the sum offered. The plaintiff appealed. The case then went to the Supreme Court.

In affirming the judgment of the Superior Court, the Supreme Court said: "The facts in the case show that the mode of selection of teachers by the city was to make choice of them annually, and that they usually continued in employment in pursuance of such election for the ensuing year. But such an employment, in the absence of express stipulation, must be deemed to have been entered into under the provisions of the statute, which gave the right to the school committee to terminate it at any time."

McDevitt vs. School Committee of Malden, 298 Mass. 213 (1937) -- John W. McDevitt petitioned the Supreme Court for a writ of mandamus to compel the school committee of Malden to reinstate him to the position of principal at the required salary.

On December 17, 1935, while the petitioner was serving on tenure as a teacher in the Malden school system, the school committee elected him "Principal of the Lincoln Junior High School and the Lincoln Elementary School" to begin work on January 10, 1936. He was voted a salary of \$3000 for the junior high school and \$300 for the elementary school.

On January 6, 1936, after a city election had brought about a change in the personnel of the board, the new board voted that "the Superintendent be instructed not to recognize" the vote of December 17, "inasmuch as it does not conform with section 59, chapter 71 of the General Laws of Massachusetts and that the position be declared vacant." That section provides that superintendents of schools "shall recommend to the committee teachers, textbooks, and courses of study."

The court, in dismissing the petition, stated that the school committee had general charge of schools, that the general managerial powers of the school committee continued to exist after December 17, 1935, that those powers included the power to change by a majority vote the duties of teachers on tenure at discretion and to assign them new duties, or to continue them in their existing duties, or to return them to duties formerly performed, that a principal is merely a teacher who is entrusted with special duties of direction and management, and that the purpose and result of the second vote were merely to continue the petitioner as a teacher in the performance of the same duties performed before December 17, 1935, an act which was within the power of the school committee to carry out.

The court stated further that the fact that a majority of the committee were mistaken in their belief that the December 17 vote was invalid because the superintendent had

not recommended the petitioner, that belief was not the dominating reason for the vote of January 6; and that the petitioner was not entitled to the increase in salary as it is not the intent of section 43 of chapter 71 to protect a "salary" the right to which never became vested.

Moran vs. School Committee of Littleton, 317 Mass. 591 (1944) -- John Geddes Moran, a teacher serving at the discretion of the school committee in Littleton, having been removed from his position as principal of the high school of that town after a public hearing upon charges preferred by the committee, appealed from an order of the Superior Court dismissing a petition for a writ of mandamus which he brought to secure his reinstatement.

During the hearing before the committee, two of the three members who constituted the committee testified under oath as witnesses, and were examined by counsel for the petitioner. Each of them after testifying resumed his duties as a member of the committee. Nothing in the record indicated that the petitioner had objected to the procedure, but in the petition he contended that by becoming witnesses they were thereby disqualified to act further as members and that the decision in which they participated was void.

On this point the Supreme Court said that the general rule is that a member of an administrative board who is biased or prejudiced against one on trial before the board is not required to withdraw from the hearing if no other board can hear and determine the matter, especially if his withdrawal would deprive the board of the number of members required to take a valid affirmative vote.

The court also said that the fact that two of the three members testified under oath as witnesses and were cross-examined by counsel for the teacher, did not disqualify the two from resuming their functions as members of the committee and participating in its decision as the plain facts of justice required them to disclose the facts that they knew if they intended to consider them with the other testimony. "Even in the absence of such a statutory provision, a decision made in a quasi-judicial proceeding by an administrative board based on evidence known only to members of the board is a nullity."

In answering to the objection of the petitioner concerning the introduction of six affidavits at the hearing before the committee, the court said: "Affidavits are not competent evidence to prove the truth of the statements that they contain upon a trial on the merits in courts of law unless they come within some established exception to the

hearsay rule. Members of a public board are frequently unskilled in law and rules governing admissability of evidence in courts cannot be expected to be rigidly enforced in hearings before such boards. We think that the better rule is that issues of fact affecting substantiated rights ought not to be decided on affidavits, especially if the method of proof can be avoided.

"We think that one has no just ground for complaint because an administrative board in conducting a hearing of charges against him has permitted the introduction of hearsay evidence when he has failed to show that the other evidence was not adequate to support the conclusion reached by the board. The burden was on him to prove that the decision resulted in a substantial injustice to him. That does not appear on this record.

"The order that judgment be entered dismissing the petition must be affirmed."

Paquette vs. City of Fall River, 278 Mass. 172 (1932) --
This case, found for the defendants in each case, was consolidated in the Superior Court from the cases of Lillian J. Paquette vs. City of Fall River, and Alvin A. Gaffney vs. same.

The plaintiffs, teachers in the public schools of Fall River brought actions of contract against said city to recover sums of money equivalent to a reduction in salary they received by a vote of the school committee "to reduce salaries of all teachers by an amount equal to twenty percent, effective April 1, 1931, excepting those who have not been employed for more than three years and who have not been elected to serve at the pleasure of the committee." The plaintiffs were serving at the discretion of the school committee.

The Supreme Court stated that the word "grade" in section 43 is designed to include all public school teachers employed in a particular municipality, regardless of the name of the school in which the service may be rendered. "The word 'grade' is broad enough also to comprise tenure of office."

"Clearly, identity of salary is not the sole test in determining 'same salary grade'. It is only one factor in determining whether specified teachers are 'of the same salary grade'. In deciding whether a general salary revision affects all teachers 'of same salary grade', consideration must be given not only to salary received, but also to the sum of the factors comprehended within the scope of 'grade'. Two teachers, one having a contract for one year only and the other having a continuous and indeterminate

service, cannot rightly be said to be in the same salary grade even though receiving identical sums as salary."

Peckham vs. Mayor of Fall River, 253 Mass. 590 (1925) --
Lester M. Peckham filed a petition in the Supreme Court on April 22, 1925, for a writ of mandamus directing the mayor and commissioners of the reservoir commission of Fall River to reinstate the petitioner "in his employment as ox driver in the reservoir department. . . ."

The petitioner was appointed to his position under civil service on April 27, 1923, and was employed until July 12, 1924, when he was suspended without notice and without a hearing although there was work to be done of which he was capable of doing and willing to do.

A single justice ordered the petition dismissed. Exception by the petitioner to this order brought the case to the full court. The court in reversing the order of the single justice and sustaining the exception brought out that the petitioner could be dismissed only in the manner pointed out in sections 43 and 45 of chapter 31 of the General Laws which entitles a petitioner to a hearing, and that if the petitioner had brought this petition immediately after his suspension, he would have been entitled to relief; consequently his delay from the date of his suspension to the date of petition does not bar relief nor constitute neglect.

Perkins vs. School Committee of Quincy, 315 Mass. 47 (1943) --
F. Gladys Perkins, teaching on tenure in the public schools of Quincy, was notified that she was to be dismissed. On November 26, 1940, a hearing was held before five of the seven members of the school committee, at which time evidence was presented by the city solicitor for the City of Quincy, and by counsel for the petitioner. After the close of the evidence, arguments of counsel were heard by the five members of the school committee present.

On December 10, 1940, the entire committee consisting of seven members voted on her dismissal, the vote being six for dismissal and one member voting present. Two of the members who voted for dismissal were not present at the hearing on November 26, 1940, when evidence was taken and arguments of counsel made. They did not hear any of the testimony, or see any of the witnesses. They read the entire stenographic transcript of the evidence, and the arguments of counsel, before the meeting of December 10.

Miss Perkins petitioned the Supreme Court for a writ of mandamus commanding the respondent to restore her to the position of a teacher in the public schools of Quincy. The

case was transferred to the Superior Court where the judge found the facts as stated in the auditor's report and reported it to the Supreme Court for determination.

In ordering the petitioner returned to her position the court stated: "The fundamental question for decision is whether the dismissal of the petitioner was made in accordance with the statutory requirement that 'no teacher . . . shall be dismissed unless by a two-thirds vote of . . . the committee' read in the light of other requirements of the statute, particularly the requirement for a hearing 'before the school committee' of the nature described in the statute. The judge ruled 'as a matter of law these two members [Prout and Burgin] were not qualified to vote on the . . . dismissal, and since their vote cannot be counted, there was not a two-thirds vote of the committee as required by law.' This ruling was right. A teacher has not had the hearing that the statute requires if a committee's vote for dismissal is dependent upon the vote of a member who has not participated in the statutory hearing."

Sweeney vs. School Committee of Revere, 249 Mass. 525 (1924) -- Two petitions were filed in the Supreme Court, the first being for a writ of mandamus directing the respondents to reinstate the petitioner, LeRoy E. Sweeney, as principal of the junior high school of Revere and the second to reinstate William F. Pollard as assistant principal of the senior high school in Revere, both at their former salaries of \$2762.50 and \$2600 respectively.

The facts in the case were that both petitioners had served on tenure in their positions for a number of years and that on May 22, 1923, the offices of principal of the junior high school and assistant principal of the senior high school in Revere were abolished through consolidation of the two schools on a vote by the school committee. Sweeney and Pollard were to be retained as teachers at \$2500 each. There was no evidence of the superintendent's recommendation that the positions should be abolished, or that the petitioners should be dismissed from their respective positions; nor did it appear that any economic reasons, nor want of competency and efficiency of the petitioners actuated a majority of the committee by whom the vote appeared to have been passed without any notice by the committee to the petitioners of their intended vote.

In the case of Pollard the court stated: "The record clearly showed that the votes of Murray and Reilly, two members of the committee, were actuated by feelings of political resentment and ill-will more or less openly expressed

and exhibited. The votes were not cast upon the merits of the question, whether the position held by Pollard should be abolished, in the interest of public welfare, but were cast as a convenient means of displacing him because of his political views, which did not appear to have been improperly expressed. The full committee consisted of seven members with two voting negative to the change. If Murray's and Reilly's votes were discounted, the vote would fail of the necessary two-thirds for the change. We do not consider that we are required to allow such a board to nullify the plain and salutary provisions of section 42 by simply covering their unlawful acts with a virtuous name. The committee to whose attention section 42 had been expressly called by one of the members could not do indirectly that which it could not do directly. Pollard could not be dismissed as assistant principal of the high school unless he received the customary thirty days notice, as it was found that under the consolidation the administrative duties of the principal of the combined schools would be so increased that the position of assistant principal at least would be as essential as it was before such reorganization."

In the case of Sweeney, the court said: "The auditor's report indicates that the petitioner had not been dismissed through personal hostility and that the abolishment of the principalship of the junior high school was not illegal. Consequently the votes of Murray and Reilly in Sweeney's case could not be impeached. The effect of this vote on the salary of Sweeney is not within section 43 because he was the only person of his class."

The Supreme Court sustained Pollard's petition, reinstating him to his former position with costs. In Sweeney's case the petition was dismissed.

Pulvino vs. Town of Yarmouth, 286 Mass. 21 (1934) -- In this case the plaintiff, Joseph Pulvino, brought action of contract against the towns of Yarmouth, Dennis, and Brewster to recover salary alleged to be due him under a contract of employment as supervisor of music in the schools. The action went before the Supreme Court upon Pulvino's exception to an order from the Superior Court directing a verdict for the defendants.

Pulvino was employed as Supervisor of Music in the towns of Yarmouth, Dennis, and Brewster, said towns being joined in a superintendency union. The plaintiff was notified by letter under date of September 1, 1931, on a form of the "School Committee of Yarmouth" that he was elected a regular teacher in the public schools of the three towns

for the term of one year at a salary of \$1600 from September, 1931, to June, 1932, and assigned to the Music Supervisorship School. This letter was signed "Superintendent of Schools for the Committee of Yarmouth." The plaintiff began work and was paid every two weeks.

At a joint meeting of the school committees of the three towns held December 9, 1931, the superintendent reported dissatisfaction with the plaintiff. The meeting voted unanimously that the superintendent be authorized to make a substitution. Within a few days the superintendent asked the plaintiff to resign. Later the three towns voted separately to authorize the superintendent to notify Mr. Pulvino that his services were discontinued as of December 31, 1931, by action taken on December 9, 1931. Another teacher was elected.

The Supreme Court, in overruling the exceptions and sustaining the verdict of the Superior Court, said: "There was no contract made which was binding on the defendants, followed by an illegal breach, as there was no evidence that the plaintiff was elected by the joint committee. If we were to assume that he ever was elected a teacher, he would still be unable to show wrongful action in his discharge. It has long been the law that a school committee could discharge a teacher at any time."

Reed vs. School Committee of Deerfield, 176 Mass. 473 (1900) --
William A. Reed petitioned the Supreme Court for a writ of mandamus to the school committee of the Town of Deerfield and to Chester M. Barton, commanding them not to interfere with the petitioner in the performance of his duties as superintendent of schools in the district composed of the towns of Deerfield, Hatfield, and Leverett. The case was heard before a single justice of the Supreme Court who reported it for the consideration of the full court.

At a meeting of the joint committees on April 7, 1900, the convention organized and proceeded to the business of electing a superintendent of schools. For the purpose of equalizing the vote, the group agreed unanimously that because the Deerfield group consisted of nine members, seven of whom were present, and the other groups consisted of three members each that the vote of each member from Deerfield should count three-sevenths of a vote, giving the seven members from Deerfield three votes, the same as each of the other towns.

A formal ballot was taken and Chester M. Barton received four and five-sevenths votes, while Frank Kennedy received four and two-sevenths votes. The chairman de-

clared that there had been no election, and the meeting adjourned until April 21, 1900. Barton had been serving the union as superintendent for five consecutive years prior to 1900 and continued to serve to the time of the filing of the petition in this case.

On April 21, 1900, at the adjourned meeting of the joint committee attended by three from Leverett, three from Hatfield, and eight from Deerfield, it was voted to rescind the vote at the previous meeting, seven voting in the affirmative, six in the negative. In voting again for a superintendent, it was agreed unanimously that each member from Leverett and Hatfield should have three votes, and each from Deerfield should have one vote. A formal ballot was then taken and the petitioner, William A. Reed, received twelve votes and Barton eleven votes. The chairman declared the petitioner elected, and no objection was made thereto. Upon this ballot, thirteen votes were cast, seven members voting for Barton, of whom two were from Hatfield and five were from Deerfield, and six voting for the petitioner, of whom three were from Leverett and three from Deerfield, and one member cast a blank ballot.

The petitioner was informed of his election as superintendent, and he accepted the position. On April 26, 1900, he began his duties, but on May 7, 1900, he received a notice from the Deerfield committee that they should recognize Barton as superintendent.

In sustaining the petition, the Supreme Court said: "At the first meeting, the respondent, Barton, was elected and should have been declared elected by the chairman; however, this was not done and the meeting was adjourned and at the adjourned meeting it was voted to rescind the vote of the previous meeting. We are of the opinion that it was within the power of the meeting to rescind its vote."

Rinaldo vs. School Committee of Revere, 249 Mass. 167 (1936) -- Clara Rinaldo filed a petition for a writ of mandamus in the Supreme Court to compel the school committee of the City of Revere to reinstate her to her former position as a teacher in the public schools of that city. The case was heard by a single justice of the Supreme Court who found material facts and reported the case for determination to the full court.

The petitioner, after serving as a teacher in the public schools of Revere for three consecutive school years, was reelected in 1930 and thereafter served at the discretion of the school committee. In 1927 the school committee adopted a rule that "it shall be inserted in the

contract of every woman teacher that marriage of a teacher shall terminate her contract, even if on tenure." In 1929 the committee adopted a second rule that "marriage of a woman teacher . . . shall operate as an automatic resignation of said teacher, and this regulation shall apply to teachers on tenure."

The petitioner was well aware of the committee's policy in this respect, as her contracts contained express stipulations to the above mentioned rules, to which she had assented. In June, 1935, she married. In the following September the committee would not permit her to teach, and on November 12, 1935, after a hearing in accordance with section 42 of chapter 71 of the General Laws, the committee dismissed her, the "causes" stated as being her "violations" of the terms of her contract as a teacher and the rules hereinbefore mentioned. There was no evidence of bad faith on the part of the committee.

The Supreme Court said in dismissing the petition: "The primary question to be decided is whether, if a school committee has adopted a policy forbidding the employment of married women teachers, the marriage of a woman teacher can be found to be 'good cause' for dismissal under General Law, chapter 71, section 42 which, in its present form as amended by Statute 1934, chapter 123, provides that a teacher employed at discretion 'shall not be dismissed, except for inefficiency, incapacity, . . .' We think the answer must be in the affirmative.

"If the cause is at least fairly debatable and is asserted honestly, and not on subterfuge, that is enough. Whether or not married women should teach in public schools is a matter about which there may be an honest difference of opinion. We need not elaborate the possible arguments.

"The statutory power was in fact followed. Insistence upon remaining a teacher after marriage could be termed a violation of the second rule if not the first. The superintendent did give the committee his recommendation as required by the statute. It was in substance that the committee take action to enforce its regulations."

Sheldon vs. School Committee of Hopedale, 276 Mass. 230 (1931) -- This case resulted from a petition to the Supreme Court for a writ of mandamus to compel the school committee of Hopedale to reinstate the petitioner, Elba Sherburne Sheldon, as a teacher in the public schools of the town.

The petitioner, then unmarried, was elected a teacher in Hopedale on July 12, 1922. She went on tenure in 1925. On May 20, 1930, the school committee unanimously voted to instruct the superintendent of schools to "eliminate from

our teaching force female married teachers." This vote was taken without prior specific recommendation in regard thereto by the superintendent. At that time there were four married female teachers in the schools; one a part time music instructor. On May 26, 1930, the petitioner was informed by the superintendent of the vote of May 20, and was invited to resign. This she refused to do. Since May 20, two of the four female married teachers had resigned, and the fourth, the music supervisor, was reelected to continue her work.

On September 8, 1930, the superintendent recommended to the committee the dismissal of Mrs. Sheldon. On September 10, 1930, the committee decided to vote on the dismissal on October 14, 1930 and notified her of their intended action previous to thirty days prior to its intended action. She requested a hearing and a statement of reasons for dismissal. The reason given for dismissal was the belief of the committee that "the best interest of the schools would be served by eliminating married women from the teaching force." A hearing was held on October 14, 1930, and the petitioner was dismissed by a vote of the committee on the same date, following the hearing.

The case was heard by a single justice of the Supreme Court who found that the petitioner had married in 1928 on the assurance that her position would not be affected. The music supervisor was continued in employment because it was difficult to secure a part time teacher and because the committee did not consider her a regular teacher. The committee acted throughout in good faith and in the belief that the rule was of benefit to the schools. He ordered the petition dismissed. The petitioner excepted and the case went before the full court for a decision.

The full court, in sustaining the rule of the single justice and ordering the petition dismissed, said: "A decision that wise administration of public schools calls for the elimination of women teachers if they are married is not so irrational that it is inconsistent in law with good faith in dealing with dismissal."

Toothaker vs. School Committee of Rockland, 256 Mass. 584 (1926) -- Oliver H. Toothaker petitioned the Supreme Court for a writ of mandamus to compel the school committee of the town of Rockland to reinstate him to his former position as superintendent of schools.

The petitioner had been employed on tenure in his position, having been employed since September, 1921. One of the three members of the school committee, Mr. Easton,

was elected to his post in March, 1924. During that year he was the only member of the three not satisfied with the petitioner's incumbency. In March, 1925, another member, Mr. Ford, was elected to the committee. He too was unfavorable to the petitioner. In fact the outstanding issue of the campaign for election in 1925 was the dismissal of the superintendent.

On April 28, 1925, the secretary of the committee notified the petitioner by letter that "on June 17, 1925, a vote of the school committee will be taken on the question of your dismissal . . ." The petitioner requested a hearing and reasons for the proposed vote. On the morning of June 17, 1925, Mr. Easton called the third member of the committee, Mrs. Hayden, who was favorable to the petitioner stating that the petitioner desired a hearing, and that a special meeting would be held that afternoon. She gave her consent to the hearing but did not attend the special meeting and had no knowledge that the question of grounds upon the proposed vote was to be taken. When she learned of the narration of grounds at the evening meeting, she "protested the whole proceeding."

At the evening meeting the petitioner attended with witness. Also present were the three committee members, a stenographer, and counsel for Easton and Ford. At the meeting Easton and Ford stated that the grounds for their proposed action were: "1. Lack of harmony and cooperation between the committee and Superintendent which is detrimental to the welfare of the schools. 2. It is believed that we can obtain and maintain a higher standard . . . with the assistance of some other Superintendent than yourself."

The vote was delayed until June 25, 1925, because of graduation exercises at the high school. On that date the committee voted to dismiss Mr. Toothaker by a vote of two to one.

The case was referred to an auditor and later heard by a single justice of the Supreme Court who denied the petition. The petitioner took exceptions and the case went to the full court which upheld the decision of the single justice who stated: "The notice of intention to vote on removal was sufficient. The special meeting of June 17 was legal as there was no evidence of fraudulent concealment. There was no illegality in the attendance of counsel for the members of the school committee at the session on June 25.

"The vote to dismiss the petitioner was valid. Upon the evidence of the report to the auditor, I am unable to

conclude that the action of the members of the committee was dictated solely by personal ill will. The votes of the town had no binding or legal effect to control the action of members of the committee; but they could consider in deciding what was for the welfare of the schools the feeling of large numbers of the citizens towards the superintendent.

"Dealing with the matter as one of discretion, I do not feel that one whose usefulness as a superintendent is so doubtful in view of the circumstances disclosed by the evidence, should be retained in office by this court; even though his ability and willingness to render good service to the schools of Rockland are as great as, from the evidence, I believe them to be, and although his dismissal is so likely to be a cause of regret to the committee and town."

Wood vs. Inhabitants of Medfield, 123 Mass. 545 (1878) --
In an action of contract against the town of Medfield, Cornelius E. Wood attempted to recover \$150 alleged due to him as unpaid salary as a teacher in the public schools of Medfield. The case first went before the Superior Court without jury.

The plaintiff's contract for the year 1873-1874 was signed with the understanding that he teach for the year and was for \$1200. The school committee voted to close the school on May 29, 1874, and discharged the plaintiff. They notified him that his services were no longer required but gave no reason for their action.

Wood objected to the action of the committee on the ground that they had no right to deprive him of his salary, except for some incapacity, or misconduct or other breach of contract. The judge ruled otherwise and ordered judgment for the defendant. The plaintiff alleged exceptions and the case went to the Supreme Court.

In overruling the exceptions, the Supreme Court stated that there was no authority in law by which a school committee can bind a town to pay for the services of a teacher after he shall have been discharged by the school committee acting under its obligations of duty.

Opinion of the Attorney General, Volume 5, Page 422 (1919) --
In a letter to the Commissioner under date of December 3, 1919, the Attorney General said:

"You have requested an opinion on the following propositions:-

'Can a joint school committee, acting in December of this year, elect a superintendent of schools for a three year term to begin July 1, 1920?'

'Can said committee elect a superintendent of schools to serve temporarily; that is, from January 1, 1920, to July 1, 1920?'

"The law relating to this subject is incorporated in Revised Laws, chapter 42, section 44, as amended by Statute 1911, chapter 384, section 1, and is as follows:

'The joint committee shall annually, in April, meet at a day and place agreed upon by the chairman of the committees of the several towns comprising the union and shall organize by the choice of a chairman and secretary. They shall employ a superintendent of schools, determine the relative amount of service to be performed by him in each town, fix his salary, apportion the amount thereof to be paid by the several towns and certify it to each town treasurer. Such superintendent of schools shall be employed for a term of three years, and his salary shall not be reduced during such term.'

"This law relates to the selection of a superintendent of schools by the joint school committees of school unions, and is not specific on the points about which you inquire.

"It is my opinion that a superintendent must be employed for a three year term, regardless of when employment begins."

Opinion of the Attorney General (1938) Page 28 -- The following opinion was in answer to a question concerning the status of teachers on tenure in the City of Pittsfield, resulting from a proposed revision in the city charter:

"Said statute of 1932, chapter 280, section 37, provides in effect that teachers shall be appointed only for terms not in excess of one year. This provision is entirely inconsistent with the terms of General Law, chapter 71, relative to the election of teachers 'to serve at its [the school committee's] discretion', as the quoted words are used in chapter 71, sections 41 and 42. As used in said sections 41 and 42 the phrases 'serve at discretion', 'to serve at discretion' and 'employed at discretion' connote employment not for a period with a fixed and definite maximum length, but for an indefinite period. Hence the provisions of said General Law, chapter 71, sections 41 and 42, with relation to the tenure of teachers who are chosen to serve at discretion, have no application to teachers who are appointed annually, as those functioning under the newly adopted charter of Pittsfield are to be. In other words, the terms of said section 41 and at least the second sentence of section 42, are rendered ineffective as to the teachers of Pittsfield by the passage and adoption of said Statute 1932, chapter 280, when it becomes fully effective as described in its section 46.

"Teachers have no vested interest in the tenure of their offices that the same may not be altered or destroyed by an act of the Legislature, so that teachers elected prior to the passage of said chapter 280 will be in no different case than others after the act becomes effective in this respect."

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Approved by:

Albert H. Purvis

Problem Advisor

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